The Solicitors' Journal

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Current Topics.

The Law Society Meeting: President's Address.

THE fifty-third Provincial Meeting of The Law Society, which was held at Exeter last Tuesday and Wednesday, was the occasion of the reading of five interesting papers, the contents of which will be briefly indicated in these columns. Full reports appear or will appear in this and next week's issue, and readers desiring further information on the various subjects dealt with are referred to them. In the course of his presidential address which forms the subject of the present paragraph, MR. F. E. J. SMITH reviewed the outstanding events of the past year and alluded to the discussion on the work of the Council and The Law Society which, for the first time at these meetings, would follow the address. The speaker welcomed such discussion and expressed the hope that it would enable some to appreciate, if they did not already do so, the exacting duties of the members of the Council and the care taken in their performance. He hoped, also, that sufficient interest would be aroused to induce those members of the solicitors' branch of the legal profession who still stood outside The Law Society to join it and so enhance its status and add importance to its criticisms and recommendations. He drew attention to the activities of the Council and the various committees and to the exacting nature of the President's responsibilities and, in view of the latter, suggested that a limit of fifty years' practice might be approximately the term after which no one should be called upon to occupy the position of President. The principal subjects of the address were county court jurisdiction, education, and poor persons' procedure. On the first of these topics the speaker advocated some extension of county court jurisdiction and deprecated the necessity for giving forty-eight hours' notice of change of solicitor to the registrar and every party to the case as required by s. 86 of the Act of 1934, and the Rules of 1936. In regard to education the speaker found himself wholly in agreement with the conclusion that the legal profession would in time follow the medical and accept the intermediate test of the Universities as sufficient evidence of proficiency in the elements of law, and that it would become increasing common for the prospective articled clerk to master those elements in a whole-time course at a law school before entering into articles. By so doing, a young solicitor would get much better taught, would enter the office far better qualified to profit by the training there, and be able to devote his whole time during the early years of his articles to the office work entirely free from attendance at a law school and preparation for the Intermediate. In regard to the third point above mentioned, the President advocated the extension of the jurisdiction of the District Registries to cover paid divorce cases, particularly in view of the possible inundation of Poor Persons' Committees with applications following upon recent statutory provisions in regard to matrimonial cases. The speaker also alluded to trust corporations and banks acting as trustees, touting and undercutting, and solicitors' undertakings; and concluded by pleading for further support for the Solicitors' Clerks' Pension Fund.

Income Tax.

MR. R. F. W. HOLME'S paper on Income Tax was among the most interesting and informative which have been delivered on these occasions. The speaker expressed disapproval of income tax in principle, and alluded to certain aspects of the present law as evidence of bad statesmanship—among them the fact that the income of the widow and orphan are taxed but not the ill-gotten gains of the burglar or the prostitute. He also referred in this connection (in our view rightly) to the disadvantages in the way of allowances under which married people labour, and pointed to the inconsistency in light of the statutory trend in other departments of life of regarding the income of a married woman for tax purposes as that of her husband. But on his main criticism the speaker did not suggest any alternative to income tax, and the inconsistencies to which he alluded do not appear to justify the sweeping condemnation of a tax unless a practical alternative is forthcoming. He alluded briefly to the important part he played in the consolidation of income tax law effected by the Act of 1918, and recognised the necessity for a further consolidation at the present time. In this connection he commended the work of the Income Tax Committee, which was set up in 1927, and produced its report and draft Bill in 1936. He deprecated criticism founded on delay and stated that the Committee's task was so colossal, and had been so admirably performed, that the nine or ten years occupied were all too short. "It is really a wonder," he said, "how the learned gentlemen who composed the Committee (most, if not all, of whom had other duties to attend to) succeeded in getting through this great work in so short a time." The speaker alluded to the danger of the substitution in the draft Bill of "comes to the conclusion" for "discovers," in relation to additional assessments, and made some interesting comments on s. 103 and r. 21 of the General Rules of the Act of 1918—parts of the present law of special importance to solicitors. He dealt with the subject of casual profits, particularly in regard to the proceeds of bets, reference being made to *Graham* v. *Green* [1925] 2 K.B. 37, and *Down* v. *Compston*,

81 Sol. J. 358, and concluded by appealing "to the powers that be . . . not to relegate the draft Bill, produced by a Committee of eminent experts . . . to the limbo of forgotten measures."

The Legal Education of Country Solicitors.

In his paper entitled "Some Aspects of the Legal Education of a Country Solicitor," Mr. H. G. Lemmon emphasised the importance, first, of a sound knowledge not only of law but of legal principles, secondly, the ability to apply theoretical knowledge to practical purposes, and thirdly—what he thought to be the most valuable of all—a thorough knowledge of human nature. In regard to the transition from the theoretical to the practical, the speaker recalled his own experience when, as an articled clerk, after a successful honours course at Cambridge, he was first faced with a very ordinary abstract of title. "To be quite frank," he said, "I almost wept over it, while at the same time I felt, and probably was, quite capable of giving a more or less sound opinion on a case for the advice of counsel." The speaker may rest assured that his experience is not unique. In regard to advocacy in the county court and police court, described as an inevitable concomitant of a general country practice, it was urged that some experience in this branch of work should be offered to articled clerks as a recognised part of their legal education. This, it was said, could very easily be done, for parties of students could, as a part of the curriculum of The Law Society's School and under its invaluable auspices, be taken to the High Court to listen to the leading advocates of the day, and to the various police courts of the Metropolis or wherever their course of legal lectures might be held, and thus given the opportunity of learning the vital importance of a mind attuned to the exigencies of a case from moment to moment, a real knowledge of the legal principles involved and, above all, sufficient self-confidence to stand firm when necessary with judge or magistrates as well as with the other side. In regard to the specific kind of legal knowledge offered by The Law Society's own central school, the speaker thought that there was an increasing danger that the tuition offered might become modelled too much on university and juristic lines, and he urged that there was not the slightest need for The Law Society to attempt to compete with the universities and those Law Schools that had totally different objectives in view, and that neither desired nor professed to give the practical teaching so much a *sine qua non* in the solicitors' branch of the profession. After a further review of the subject, the speaker indicated that he was not impressed by the fact that a thoroughly practical and comprehensive syllabus might necessitate the lengthening of articles, and he suggested that except in the case of a university honours degree in law, no shortening of the statutory period of five years should be granted, and even then, not below four years. In conclusion, Mr. Lemmon asked the council to accept his assurance that his paper was the result of much careful thought (as indeed was clearly the case), and that it had been evolved out of his own hardly earned experience as a country solicitor in a smaller provincial town.

Criminal Law Revision.

Mr. J. Whiteside's paper, "An Aspect of the Need for Law Revision," was concerned with a number of anachronisms and inconsistencies of the criminal law, and particularly that part of it which is administered by the justices. The speaker alluded to what has been accomplished by the Law Revision Committee in the branches of law which have come before it, and pleaded for another committee, which should include not only the most eminent criminal lawyers but also stipendiary magistrates, clerks to justices and solicitors practising in the inferior courts, and effect a similar reform concerning the mass of law upon which magistrates adjudicate. It was thought that the most valuable work of such a committee would consist in overhauling and re-casting the law of practice and procedure in courts of summary jurisdiction. "They would," it was said, "need no suggestions of where reform is needed; once allowed to go to the water they would drink deep." Moreover, it was urged, the substantive law administered by these courts cried aloud, in many of its branches, for the same revising hand. As an example, the audience was asked to consider in juxtaposition two things which the law regards as dangerous, one to life and the other to morals—firearms and automatic gaming machines. "The law as to firearms," it was said "is comprehensive and complete, and is entirely the production of the post-war years; the statute law relating to automatic gaming machines began in 1541 and ended in 1854—about half a century before the automatic gaming machine as we know it to-day first began to shout the odds." Considerations of space forbid our dealing with the speaker's suggestions at the length they deserve, but the following may be shortly noted. At a time when the theory of punishment is slowly emerging from the retributive to the reformative it was thought that the criminal law might perhaps be extended cautiously to include blameworthy acts which have not hitherto been crimes, that the committee envisaged might consider the expediency of abolishing the distinction between felony and misdemeanour, while, the speaker urged, "it ought to be possible at the present time for Parliament to pass a short Act applicable throughout the country expressing in general terms exactly what the powers of arrest without warrant shall be." The obvious difficulties in drafting such an Act were recognised, but it was thought that they should not be insuperable, while the saving in judicial time in the future would adequately compensate for the Parliamentary time spent upon such an Act.

The Deaf Motorist.

We recently alluded in these columns to the subject of defective eyesight as a bar to driving efficiency. Deficiency in regard to another sense—that of hearing—which on first consideration might be thought a serious handicap to the driver and render him a source of danger to other road users, has recently been ventilated in the press, and it is probable that the informative letter by Mr. Leslie Edwards, Hon. Secretary-Treasurer of the British Deaf and Dumb Association, has been perused by many of our readers. The various arguments cannot be repeated here, but it may be recalled that the writer of the letter urged, in our view rightly, that the whole aim of the Highway Code and of recent legislation and provision in regard to motoring, and every practical effort being made to reduce accidents, is to teach and impress upon motorists the necessity of driving by sight. The writer instanced road signs, white lines, pedestrian crossings, halt signs, driving signals; and duly noted the movement on foot to abolish the motor horn. He suggested, moreover, that a large proportion of unexplained fatal accidents would be found to be due to momentary distraction from the responsibility of keeping the eyes on the road, when in charge of a motor-car, by reason of conversation, laughter, etc., among passengers. That there is much force in these and other considerations advanced by the same writer is undeniable, but it is difficult to ignore the fact that certain emergencies arise, the existence of which can only be brought home to the driver by ear. The writer makes a further interesting point that the partially deaf may continue to rely upon what percentage of hearing they still possess, and that his remarks are only intended to apply to the stone deaf. "It is a strange commentary," he writes, "to find that many insurance companies will accept for motor risks persons with this defective hearing upon which to rely and refuse to consider totally deaf applicants for similar risks, although the latter can demonstrate and prove unequalled safety on the road, whether as pedestrian, cyclist, or motorist." It may readily be conceded that, as the writer urges, only when all road users are taught, trained and compelled to rely entirely upon

sight, as in the case of the stone deaf, will there be considerable reduction in the dreadful annual total of fatal road accidents, but this does not eliminate the particular danger to which those with the affliction in question are subject, nor does it prove that the "hard of hearing" are *ipso facto* a greater source of danger than the completely deaf.

Car Design and Road Safety.

BEFORE the activities of the Michaelmas term are reflected in these columns and preclude reference to subjects other than those of exclusive legal significance it may be advisable to mention a matter of considerable importance in relation to the problem of road safety. The matter was ably ventilated by Mr. LAURENCE H. POMEROY, M.I.Mech.E., in a paper entitled "Cars for Road Safety," and read at the recent meeting of the British Association. While it is impossible, within the space at our disposal, to give even the barest summary of the many interesting points made by the speaker, a brief reference may be made to some of them. Mr. POMEROY regretted that maximum speed bulks so largely in publicity matters and in the minds of many designers and drew attention to the importance of rapid acceleration from the viewpoint of safety. The latter not only effects a very desirable reduction of time during which a road is occupied by the overtaking vehicle, but it also tends to relieve traffic congestion. There is much force in these arguments as the comparatively good record of Sunday in the matter of safety when the roads are largely clear of the slower traffic would seem to indicate. But it is undeniable that in the hands of the novice the car with high accelerative performance may itself constitute a source of danger. On the question of body design the speaker criticised the tendency to reduce overall height both as restricting the driver's vision and providing the passenger in the back seat with insufficient head clearance. He was rightly critical concerning the lolling position adopted by some drivers (though certain designers may be responsible to some extent) and described such an attitude as affected, impracticable and a violation of the fundamentals of physiology. The blind spot occasioned by the windshield pillar increased as it is by the opening type of windshield was also alluded to. The importance of adequate ventilation—a subject to which we recently drew attention in these columns—was duly emphasised. Among other matters dealt with were the adverse influence of cost on the all important provision of an adequate braking system, and the problems associated with steering, springing and transmission. These last three subjects have an important bearing on road safety, but the speaker's treatment was of too technical a character to justify reproduction here. Finally, we may refer to the speaker's advice as to the proper procedure to counteract an under bonnet fire. If such a fire occurs, the right thing to do, he said, is to stop the car as quickly as possible, leaving the engine racing so that the flames are drawn into the inlet pipe.

The Statutory Output.

WHILE every professional man is expected to keep abreast of the literature affecting his special calling, the lawyer is required to master, or, at all events, to read a mass of printed matter much beyond what his brethren in other professions have to assimilate, and every now and again he is moved to protest against this surfeit with which he is faced. White Books and Red Books continue to exercise their tyranny over us all, but in addition to their congested contents of Orders and Rules, Parliament issues each year a goodly volume of statutes which can on no account be neglected by the lawyer if his knowledge is to be kept up to date, for this annual publication may well contain something affecting the particular question he is called upon to consider. It is indeed astonishing how copious is the product of the legislative machine. Taking the last volume, it will be found that since December, 1936, to 30th July of the present year, the number of Acts added to the statute book was no less than seventy, a figure considerably in excess of that for several years past, while, as usual, the contents of these show an extraordinarily wide range of subject matter. As affecting the Constitution we had the Act giving formal efficacy to the abdication of His Late Majesty KING EDWARD VIII, and the other providing for the contingency of a regency. Apart from these there were a number of Acts relating to insurance and other branches of the social services, local government in its varied branches, and not the least important, the Matrimonial Causes Act, which, during its passage, evoked much debate for and against its principle and actual operation. These and, indeed, most of the other contents of the volume will provide much food for serious study.

Housing Rural Workers.

IT is satisfactory to be able to record that the response to the measures recently taken by the Ministry of Health to make more widely known the provisions of the Housing (Rural Workers) Acts, has been substantial. Reference was made in these columns a few months ago to the interesting explanatory booklet concerning the statutes, the issue of which, with a poster and folder, was prompted *inter alia* by the marked variations in the use of the statutes in the various districts and, as instancing the value of the measures adopted, it is of interest to record that up to August the total number of agricultural dwellings in England and Wales in respect of which grants or loans were promised was 15,056, compared with a total of 11,513 towards the end of last year. Readers will remember that the original Act would have expired but for its continuance by the second Act. These Acts will expire on 21st June, 1938. The question of their renewal is, it is stated, now under consideration by the Central Housing Advisory Committee, and, as they are working well, especially since the propaganda campaign above referred to, it is thought likely that they will be continued. The Acts themselves so admirably combine the requirements of the day with the preservation of the character of the countryside that it is much to be hoped that the legislature will see its way to prevent their extinction. The main provisions of the Acts were indicated in our previous note upon the subject and need not be repeated here.

Drawing up Orders: Delay in Chancery Division.

REFERENCE is made in the September issue of *The Law Society's Gazette* to a matter which we venture with due acknowledgments to our contemporary to put before our readers. The Council of The Law Society recently sent to CLAUSON, J., correspondence containing a complaint of delay in drawing up a common form adoption order. In the particular instance the order had been made the day before the last day of the sittings, and the ensuing vacation had been longer than usual owing to the Coronation. Moreover, it was not, owing to arrangements which had to be made for holidays, practicable to treat adoption proceedings as *primâ facie* vacation business, though, the learned judge indicated, they would always be so treated if some special reason were shown. During the period in respect of which the delay had been complained of the Scrivenery Department had been suffering from a shortage of staff which the Treasury had since remedied. Of more general application is the statement by the learned judge that efforts had been made for eliminating, in the case of common form orders, some of the stages through which the order had to pass on its way from the judge or master to the final entering stages, which were essential in the case of many Chancery orders, but could, with certain precautions, probably be eliminated with reasonable safety in the simpler cases. It was also intimated that consideration was being given to plans for sub-dividing the Scrivenery work so as to prevent the heavier orders obstructing the passage through the office of the simpler orders which, individually, could be dealt with much more expeditiously.

Mr. F. E. J. Smith.

We have pleasure in presenting with this issue a portrait of Mr. Francis Edward James Smith, solicitor, who has been elected President of The Law Society for 1937–1938. Mr. Smith is senior partner in the firm of Messrs. Lee and Pembertons, of Lincoln's Inn Fields, W.C.2.

Born in Oxfordshire in 1863, he was educated at Winchester and at New College, Oxford, where he took second-class Honours in Classical Moderations in 1884 and second class in the School of Literæ Humaniores in 1886. He served his articles with the late Sir Walter Trower, of New Square, Lincoln's Inn (who was himself President of The Law Society in 1913–14), and was admitted a solicitor in 1889. In the following year he joined the firm of Messrs. Lee & Pembertons.

Mr. Smith was elected a member of the Council of The Law Society in 1922, and has been a member of the Examination Committee since 1924. He was Vice-President of the Society in 1936–37.

He has been Chairman of the Clerical, Medical and General Life Assurance Society since 1919, and of the General Reversionary and Investment Company. He is also a Director of the Employers' Liability Assurance Corporation. He is a Knight of Grace of the Order of St. John of Jerusalem. His recreations are reading and travelling.

Mr. Smith married in 1901 Miss Adela Constance Villiers, and has one son and two daughters.

One Hundred and Fifty Years Police Court Work.

Almost on the eve of celebrating the 150th anniversary of its establishment the Westminster Police Court, London, is threatened with abolition. A Departmental Committee* has recommended changes in the organisation of courts of summary jurisdiction in the Metropolis which will necessitate the closing down of this old court. If this recommendation is adopted an interesting link in the development of the modern police court will be destroyed, and citizens of Westminster will regret the passing from their midst of yet another institution which has played a part in the history of that great city.

The original Westminster Police Court was established in 1792, by an Act of Parliament of that year, as a "Publick Office," to be presided over by "three fit and proper persons being Justices." The chosen site was 19 Queen Square (now known as 46 Queen Anne's Gate). The building housing the court was not new; rate books show the names of occupants from 1706. From 1718 until 1720 it was the abode of the Duke of Beaufort; in the years 1778 to 1783 it was the residence of Sir John Hawkins, a friend and executor of Dr. Johnson.

The justices then appointed resided on the premises, and each received a salary of £400 per annum, free of taxes. Records show that the court had two clerks, termed First and Second Clerks, and the justices were authorised to engage six constables, and to pay them six shillings per week. The justices in those early days were really heads of a small police force. They engaged and paid the constables, and directed their work. The title "Police" Court, to-day in disfavour, probably originated from these times, when the justices were called Police Magistrates and the court really was a Police Court.

In a study of the development of courts of summary jurisdiction and of police forces, the public offices and their small staffs of constables provide an important stage. At this time, 1792, there were in London eight public offices, each employing six constables, sixty-eight "patroles" at Bow Street, under Sir William Addington, and a civil force of forty-one at Thames Police Office. In addition, there were over seventy trusts, authorities or vestries employing watchmen at payments varying from 8½d. to 2s. each night, and a further 721 officers of justice, including parish constables, appointed to keep the peace and detect and apprehend offenders. There was thus a total of 878 officers, of whom only 157 were paid to devote their whole time to the public service.†

Such a state of things naturally led to demands for reform, but it was not until 1829 that legislative action was taken. In that year the Metropolitan Police Force was established, and the small forces employed by the magistrates were merged into one force with a central authority.

From 1792 until 1839 the only qualification required of a person to be appointed to one of the public offices was that he should be a justice. The first Westminster magistrate was Henry James Pye. He came of a family long connected with Westminster, having descended on the distaff side from the famous John Hampden. The name is found in Westminster in Old and New Pye Streets. He was Poet Laureate, but his only real claim to fame, if it can be called that, is that he was the first Laureate to receive a fixed salary of £27 per annum, instead of the historic tierce of canary. "The poetical Pye," wrote Walter Scott, "was eminently respectable in everything but poetry."

One of his colleagues at Westminster was Patrick Colquhoun, a man of amazing industry, who, in turn, was merchant, industrialist, author, sociologist, and magistrate. It was he who established the Marine Office at Wapping, in order to prevent depredations on ships lying in the River Thames. His industry and benevolence are commemorated by a large tablet in St. Margaret's Church, Westminster.

The early magistrates were required to be in attendance from 11.0 a.m. to 1.0 p.m., and again from 6.0 p.m. to 8.0 p.m. These hours were altered by subsequent statutes, until in 1839 was passed the Metropolitan Police Courts Act, on which the modern London Police Courts are based, and an Act which finally severed the connection of the magistrates with the police. This Act fixed the hours of attendance of magistrates at 10.0 a.m. until 5.0 p.m., and for the first time required them to have a legal qualification. Henceforth, they were to be persons who had practised "as a barrister for four years then last past, having practised previously as a special pleader for three years below the bar." Another innovation was the requirement that "no person shall be appointed chief clerk . . . unless he shall be an attorney . . . or shall have served as clerk . . . in the police courts . . . during at least seven years." From 1839, the magistrates at the Metropolitan Police Courts have been barristers; the report of the Departmental Committee now recommends the introduction of unpaid lay justices.

From 1792 until 1846 the Public Office at Westminster was held at Queen Square, but in the latter year it was removed to more commodious premises at Vincent Square, where it has been ever since.

It is a matter to be regretted that the earliest records of the court are missing, but there are preserved two books of great interest. Well bound in vellum, these books deal with a period of some seventeen years. One is an "Occurrence Book" relating to the period September, 1800, to July, 1801, and the other contains copies of important letters received between 1803 and 1817. The "Occurrence Book" contains day to day entries of the work of the court, and records frequent sittings without any prisoners in charge, and an occasional sitting without any business to do. The general average included about four night charges and some half-dozen informations relating to hair-powder, seditious words, armorial bearings, "regrating" potatoes or turnips, selling new bread,

* See Report of the Departmental Committee on Courts of Summary Jurisdiction in the Metropolitan Area (81 Sol. J. 675).

† See Treatise on the Police of the Metropolis. Colquhoun, 1795.

etc. At times the court seems to have sat extremely late, as the following entry bears witness: "20th September, 1800. Capt. Griffen of the Westmr. Volunteer Corps, on duty at this Office, with 10 privates & a Serjt., at half past 8 o'clock. Capt. Elliot came at 10 o'clock and relieved Capt. Griffen, & staid till half past 12." The presence of the military on this occasion seems to indicate trouble of some sort.

Many of the letters in the letter-book are of considerable interest. In distinction to the modern tendency to throw the full light of publicity upon all court proceedings, there is this Home Office letter of the 3rd May, 1804:—

"Gentn.,

I am directed by Mr. Yorke to call your particular attention to a letter which Mr. Hutton wrote to you on the 9th of May, 1801 by the Duke of Portland's direction desiring you to prevent the publication in the newspapers of such examinations as may take place at your office. The mischief resulting from the practice has been so great that the Attorney and Solicitor General are determined to give orders for the prosecution of any person who may be guilty of it in future and Mr. Yorke directs that you should transmit Information to this office of any person transgressing or attempting to transgress these orders."

The River Thames from the Temple to Blackwall is nowadays an important part of London's dockland, and the districts adjoining the banks are not the most fashionable. How refreshing is it to find the following letter:—

"Wednesday, 18 June, 1806.

"Gentn.,

It having been agreed by the Magistrates present at the Term Dinner on Monday that we should meet again at the same place at Blackwall on Monday 30th instant at 4½ o'clock precisely I am to acquaint you therwith:

There will be boats waiting from one until two o'clock at the Temple Stairs, Hungerford and Battlebridge to take you to the Thames Police from whence they will set of for Blackwall a quarter before three o'clock.

If there be any excuses you will be so good as to send them by Friday 27 instant.

I am, Gentlemen,
Your most obedt. very
humble servt.
JOHN REEVES."

Other letters refer to the impressing of men for the Navy, the apprehension of deserters, statistical returns about watchmen and beadles (including a reference to a payment of one shilling per week for delivering rattles to the watch), and matters of less interest.

It will be a pity if the old court goes, but if its going is to assist in the better administration of justice in the Metropolis, one can only heave a sigh of regret at its passing, consoled by the thought that its work will be mainly taken over by the even older institution at Bow Street.

Criminal Law and Practice.

SENTENCES AND PREVIOUS CONVICTIONS.

UNIFORMITY in the practice relating to the sentencing of prisoners is not easy to attain, although it is obviously highly desirable. One of the chief aims of the Court of Criminal Appeal in reviewing sentences is to standardise them, so far as that is practicable: *R.* v. *Woodman*, 2 Cr. App. Rep. 67. "It is one of the advantages of this tribunal," said Darling, J., in that case, "that it tends to a standardisation of sentences. Of course, no invariable tariff can ever be fixed, for it is impossible to classify guilt so nicely as to indicate it even approximately by the names given to the various crimes." With this end in view, magistrates welcome any authoritative guidance on the subject. Some such guidance is to be found in the recent decision of the Court of Criminal Appeal in *R.* v. *Fowler*, 26 Cr. App. R. 80 (23rd March, 1937).

The appellant had been convicted at quarter sessions of an offence under s. 15, sub-s. (1), of the Road Traffic Act, 1930, under which "any person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road or other public place is under the influence of drink to such an extent as to be incapable of having proper control of the vehicle, shall be liable . . . (*b*) on conviction on indictment to imprisonment for a term not exceeding six months or to a fine, or to both such imprisonment and fine." Sub-section (2) provides that unless the court for special reasons sees fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, a person convicted of an offence under the section shall be disqualified for a period of twelve months from the date of the conviction from holding or obtaining a licence.

The appellant had been twice before convicted of careless driving contrary to s. 12 of the Road Traffic Act, 1930, and once for failing to have proper control of his vehicle. For the present offence he was sentenced to a term of six months' imprisonment in the second division and was disqualified for an indefinite period from holding a driving licence.

It was argued that an order could validly have been made for disqualification for life, and that the period actually imposed, although not definitely limited in weeks, months or years, was nevertheless determinable, as the appellant could apply to the court for its removal "at any time after the expiration of six months after the date of the conviction or order" under s. 7 (3) of the Road Traffic Act, 1930.

Mr. Justice Lewis in giving the judgment of the court held that the earlier offences were offences of a similar character to that of which the appellant was convicted at quarter sessions and the court was entitled to have regard to them in passing sentence. With regard to the disqualification his lordship said that what quarter sessions had in mind was that, for the safety of the public, the appellant ought not to be allowed to drive a motor vehicle again until he gave up his habits of drinking. He added that s. 15, sub-s. (2), did not seem to give any power to the court to disqualify a driver who has been found guilty under sub-s. (1) for an indefinite period. In view of that difficulty he thought that the order of quarter sessions in that respect was wrong, and that, in the circumstances of the case, there should be substituted for the indefinite period of disqualification the period of five years. This would mean that after a time an application could be made for the restoration of the driving licence, and the court would grant it if satisfied that the applicant had given up his habits of drinking, and was once more fit, from the point of view of the public, to take a motor vehicle on the road.

One of the principles that have been laid down with the object of standardising sentences is that the character of previous convictions must be taken into account, and if they are of an entirely different nature from the conviction under consideration, the sentence should not be so heavy as it would be if they were of the same nature. In *R.* v. *Boucher* (1909), 2 Cr. App. Rep. 177, the court reduced a sentence of nine months' imprisonment with hard labour for obtaining credit by fraud to one of three months' imprisonment with hard labour. The accused had previously been four times convicted of bicycle stealing, and the court held that those were convictions of a different nature from that under consideration. In *R.* v. *Parsons* (1911), 7 Cr. App. Rep. 76, a sentence of three years' penal servitude was reduced to one of eighteen months' imprisonment with hard labour in a case where the prisoner's previous conviction was for abduction, and the conviction under consideration was for house breaking.

It is not correct to say that previous offences of a different character to that under consideration are not to be taken into account at all. It is more true to say that not so much

weight should attach to them in considering the sentenec as would attach if they were of the same character. The mere fact that there is a large number of previous convictions should not cause the court to impose a heavy sentence for a trivial offence: *R.* v. *Maxwell* (1924), 18 Cr. App. Rep. 13; *R.* v. *Griffiths* (1932), 23 Cr. App. Rep. 153. One of the tests as to whether or not an offence is trivial is the question whether it does or does not indicate a return to crime: R. v. *Nuttall* (1908), 1 Cr. App. Rep. 180. The best summary of the law on this important question is to be found in the words of the Lord Chief Justice in *R.* v. *Griffiths* (above): "This court has said again and again, and I repeat it now, that a man is not to be twice punished for the same offence, and it does not in the least follow that a subsequent sentence must be heavier than the sentence which preceded it."

Company Law and Practice.

Notices of Meetings.

Company law abounds in provisions which may properly be called technical. Failure to observe these provisions though not necessarily fatal if the technical defect involved is slight, is productive of much trouble, delay and extra expense, and it is, therefore, always of the greatest importance to find out in advance what formalities are required to be observed in any proceedings and to observe them scrupulously. I propose this week to direct my attention to one or two points relating to the giving of notice of meetings. All meetings of a company must of course be properly convened in accordance with the company's articles or with Table A, for if this is not done the company is not corporately present at the meeting and any business purported to be transacted thereat will be of no effect. When a company has to apply to the court (e.g., on a reduction petition or under s. 153 for the sanction of the court to a scheme of arrangement) one of the first things which will be looked into is whether or not the requisite meetings were duly summoned by proper notices.

In order to discover what steps must be taken it is necessary to turn to the articles of the company, but there is also a section of the Act dealing with this subject which should be mentioned first. This is s. 115 (1), which, after providing that a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing in the absence of other provisions in the articles, goes on to say:—

> "(*b*) Notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A and for the purpose of this paragraph the expression 'Table A' means that table as for the time being in force."

Now this provision has a rather curious result, for it means that a company, at whatever date it was incorporated, may in this respect be governed by the Table A of 1929, even if by its articles it has excluded Table A. In future, too, such a company may come to be governed by a subsequent Table A. The section is only operative, however, if and so far as the company's articles contain no other provisions concerning the service of notices.

The clauses of the present Table A which deal with notices are to be found at the very end of the table—Arts. 103 to 107. Many variations are to be found in the articles of different companies, but in substance these are usually the same as their statutory model, which in its turn does not differ materially from the Table A of 1908. The chief alteration embodied in the 1929 Table relates to service by post. Table A of 1908 provided that, where a notice is sent by post service of the notice is to be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Table A of 1929 is more precise. Service is now deemed to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the posting of the letter, and in any other case, at the time at which the letter would be delivered in the ordinary course of post. The change makes easier the task of the secretary who has to see that notices are sent out in time to comply with s. 117 (2) of the Act—a section which was lately strictly construed by Bennett, J., in *In re Hector Whaling Ltd.* [1936] Ch. 208. Moreover, the provision that service of a notice by post is to be deemed to be effected at the time at which the letter containing the notice would be delivered in the ordinary course of post has given rise to difficulties in the past. A fairly recent decision on the point is that of Maugham, J. (as he then was), in *In re Newcastle United Football Company Ltd.* [1932] W.N. 109. That was a petition to sanction an alteration of objects. The registrar refused to find that the resolution on which the petition was founded was good on the ground that two shareholders outside the jurisdiction had not received the requisite twenty-one days' notice of the meeting at which the resolution was put forward. The articles were old and contained no provisions dealing with the sending of notices to shareholders who were outside the jurisdiction. It was contended on behalf of the company that there was no obligation to give notice of the meeting to the two shareholders in question, and *In re Union Hill Silver Company, infra*, was cited in support of this argument. The report contains only a note of the judgment of Maugham, J., who, in granting the petition, is reported as observing that, although the decision in *In re Union Hill Silver Company, infra*, was a decision on a section which did not appear in the Companies Act, 1929, he would follow that case. Accordingly the resolution would be taken as having been properly passed.

The question raised in *In re Newcastle United Football Company Limited, supra*, is not one which is likely to arise very often. Table A of 1929 makes express provision for members of the company not resident within the United Kingdom. By Art. 107 it is provided that notices of general meetings shall be given to every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them. Article 104 provides for the case of a member who has no registered address within the United Kingdom. In such a case a notice addressed to him may be advertised in a newspaper circulating in the neighbourhood of the registered office of the company, and this notice will be deemed to be served at noon on the day on which the advertisement appears. This provision was considered in the case of *Dickson* v. *Halesowen Steel Company* [1928] W.N. 33, where it was held that it was permissive only and not directory, so that a company may, if it likes, advertise in the manner indicated, but is not bound to do so.

Thus if no address within the United Kingdom is supplied to the company, the member is not entitled to receive a notice by post, and if such an address has been supplied then it will merely be necessary to post a notice to that address and, as we have already seen, such a notice will be deemed to have been served at the expiration of twenty-four hours after the letter is posted.

I now turn to *In re Union Hill Silver Company*, 22 L.T. 200, the case referred to in *In re Newcastle United Football Company Limited, supra*. That was a winding up petition, and in the course of argument one of the points raised was that a certain resolution had not been properly passed. It appeared that some of the shareholders in the company were resident in America, and it was contended that they had not had proper notice of the meeting, inasmuch as the meeting was held less than seven days after the date on which the notice would reach them in the ordinary course of post. This contention

was rejected by Malins, V.-C.: "Now, if the petitioner's construction of this section [i.e., s. 52 of the Companies Act, 1862] is right, namely, that every shareholder must have notice of a general meeting, no matter in what part of the world he may happen to be, it is a most inconvenient construction, because a company cannot, without serious injury to itself, delay the transaction of important business until every shareholder in every part of the world has had notice of the meeting at which the business is to be discussed. I think that such a construction would be entirely opposed to the spirit and intention of the Act. It seems to me that the Act has reference only to shareholders who can be reached by the ordinary English post, and that, in fact, it was not necessary to serve these absent shareholders. I am, therefore, of opinion that this objection to winding up the company . . . is unfounded."

In another part of Table A we come across Art. 43, which provides that "accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting." This is a convenient regulation and it is believed to be effective, though it does not appear to have been the subject of a judicial decision.

Such are the main provisions concerning notices, and it is well that they should be known and observed. Proper notice of a meeting can be waived if all the members are present and agree to do so, and it is also possible to dispense with a meeting altogether if all the members separately discuss and unanimously agree upon a course which is honest, *intra vires* and for the benefit of the company, Moreover, a member who is present at a meeting of which insufficient notice has been given, and who acquiesces and allows the business decided upon to be carried out, is subsequently estopped from alleging that the meeting was not properly convened. But all these points are matters of detail which may be available in particular cases. In the vast majority of cases it is essential that a meeting should be properly convened by proper notices sent out to all who are entitled to receive them.

A Conveyancer's Diary.

Assents by Personal Representatives as "Sufficient Evidence."

In a recent case the important question was involved as to how far an assent by a personal representative is conclusive, in favour of a purchaser, that the assent has been given to the right person.

The question turns upon the construction to be put upon the expression "sufficient evidence" as used in sub-s. (7) of s. 36 of the A.E.A., 1925.

The sub-section reads:—

"An assent or conveyance by a personal representative in respect of a legal estate, shall in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon."

The case to which I have referred is *Re Duce and Boots Cash Chemists (Southern), Ltd.'s Contract* [1937] W.N. 310; 81 Sol. J. 651.

The facts were as follows: By a contract dated 6th January, 1937, the applicant Duce agreed to sell to the respondent company the fee simple in possession free from incumbrances of No. 8 Chain Street, Reading. The title was to commence with a conveyance dated 16th May, 1894. The abstract of title furnished by the applicant disclosed the following documents (1) a conveyance dated 16th May, 1894, to George Hookham (hereinafter called "the testator"); (2) will of the testator whereby he appointed his son, G. E. Hookham, his sole executor and (*inter alia*) bequeathed to him No. 8 Chain Street upon trust to permit his daughter, Sophia Hookham, to use and occupy it free of rent, rates and other outgoings during her life or spinsterhood should she wish to do so, and to pay her £1 10s. a week during her life or spinsterhood, and subject and charged as aforesaid for himself absolutely; (3) probate of the will of the testator granted to G. E. Hookham on 3rd December, 1931, on which was endorsed a memorandum that by an assent dated 21st April, 1932, G. E. Hookham assented to the vesting in himself of the freehold property No. 8 Chain Street for all the estate vested in the testator at the time of his death; (4) an assent dated 21st April, 1932, which, having recited the terms of the testator's will, and the grant of probate thereof, continued: "And whereas the executor has duly paid and discharged all funeral and testamentary expenses, all death duties and all debts of which he has knowledge or notice and the pecuniary legacies bequeathed by the said will without recourse to property hereinafter assured, now the executor hereby consents to all the property passing under the said will vesting in himself, the said G. E. Hookham, for all the estate vested in the testator at the time of his death . . . " That estate was described in a schedule as fee simple; (5) a deed of release dated 5th April, 1933, made between Sophia Hookham, described as being of No. 8 Chain Street, Reading, spinster, and G. E. Hookham, which, having recited the will and probate and the assent, continued: "In consideration of the premises the said Sophia Hookham as beneficial owner hereby releases and discharges the . . . premises . . . from all claims and demands in respect of the annuity of £1 10s. per week payable during her life or spinsterhood so charged as aforesaid"; (6) a conveyance dated 26th October, 1935, whereby G. E. Hookham in consideration of £2,000 conveyed the premises to the applicant.

The respondent company's solicitors made a requisition in which it was objected that Sophia Hookham was tenant for life of the premises and that G. E. Hookham had no power to assent to the vesting in himself.

The applicant's solicitors replied, relying upon s. 36 (7) of the A.E.A, 1925.

Of course, there was no doubt at all that the house was settled land and that Sophia Hookham, being a spinster and residing on the premises, was tenant for life under the S.L.A., 1925, and that the assent ought to have been in her favour. The only question was whether the assent, being under s. 36 (7) of the A.E.A., 1925, "sufficient evidence" that the person in whose favour it was made was the person entitled to have the legal estate conveyed to him, precluded the respondents from objecting to the title on the ground that G. E. Hookham was not in fact so entitled. In other words, does "sufficient evidence," as used in the sub-section, mean "conclusive evidence"?

Now, it seems from the authorities that the expression "sufficient evidence," used in a statute, may or may not mean "conclusive evidence," according to the context.

In *Ystalyfera Iron Co.* v. *Neath and Brecon Rly. Co.* (1873), L.R. 17 Eq. 142, the question arose under s. 17 of the Lands Clauses Act, 1845, which provides that a certificate of two justices shall be "sufficient evidence" that the capital required for the promoters' undertaking had been subscribed. It was held by the Court of Appeal that in that section "sufficient" meant "conclusive." Jessel, M.R., however, arrived at that decision by reading s. 17 with the preceding section and in effect upon the context.

Lewis v. *Leonard* (1880), 54 D. 165, was another case where "sufficient" was held to mean "conclusive." It was decided

in that case that an order of discharge under s. 49 of the B.A., 1869, which, by that section, is to be "sufficient evidence of the bankruptcy and of the validity of the proceedings thereon," was intended to be conclusive, so that the validity of certain proceedings leading to the order of discharge could not be questioned. Bramwell, L.J., said that there was no doubt that "sufficient" in that section means "conclusive." That decision again seems to have been based on the context.

On the other hand there are authorities where "sufficient" was held not to mean "conclusive."

In *Reg* v. *Fordham* (1873), L.R. 8 Q.B. 501, there was an application to justices for a distress warrant to recover payment of a sum found by the auditor to be due from the overseer of a parish. The certificate of the treasurer of the union that no payment had been made in respect of the sum due was made "sufficient evidence" of that fact by the Poor Law Audit Act, 1848, s. 9. It was held that "sufficient" did not mean "conclusive" and that the overseer could give evidence that a payment had been made.

Garbutt v. *Durham Joint Committee* [1906] A.C. 291, is another decision to the same effect. A certificate of approved service to entitle a constable to a pension under the Police Act, 1890, s. 1, is, by s. 4 (1) of that Act, to be "sufficient evidence" of the nature of the services. It was held by the Court of Appeal that "sufficient" did not mean conclusive, and Lord Loreburn, L.C., said, in reference to the certificate, "It was sufficient evidence—that is to say, the court might act upon it if they thought fit."

In the instant case Bennett, J., said in the course of his judgment that it had not been established that "sufficient evidence" in s. 36 (7) of the A.E.A., 1925, meant "conclusive evidence." In his lordship's opinion there must be some context of a compelling kind before it could be held that "sufficient" had the same meaning as "conclusive." In this Act there was no such context.

The learned judge then made this important statement: "The effect of the sub-section is that a purchaser when investigating title may safely accept a vesting assent as evidence that the person in whose favour it had been made was the person entitled to have the legal estate conveyed to him unless and until upon a proper investigation of the title facts came to his knowledge which indicate the contrary. When that happens the vesting assent cannot be accepted as sufficient evidence of something which the purchaser has reason to believe is contrary to the facts."

So s. 36 (7) does not seem to be so great a protection as many of us thought.

This case certainly provides an illustration of the folly of unnecessary recitals. If the will of the testator had not been recited in the assent, all would have been well for the purchaser. The will should not have been abstracted and the purchaser would then have had no knowledge of the contents of it. Recitals have been called "the curse of conveyancing," which I think is quite true. Recital of documents are in most cases unnecessary and may be embarrassing. For example, if vendors are selling in exercise of the statutory trusts or under an express trust for sale, it is quite sufficient to recite that the vendors are entitled free from incumbrances and hold upon the statutory trusts or upon trust for sale. But I must leave what I have to say on that subject for another "Diary."

The course of three lectures on the Factories Act, 1937, which has been given during September, by Mr. H. Samuels, M.A., Barrister-at-Law, at the headquarters of the Industrial Welfare Society in London, will be repeated, under the auspices of that body, at the English Theatre, Birmingham University, on Wednesdays, 6th, 13th and 20th October, at 6.15 p.m. Particulars may be had on application to the Secretary of the Society, 14, Hobart Place, Westminster, S.W.1.

Landlord and Tenant Notebook.

Paying Rent by Cheque.

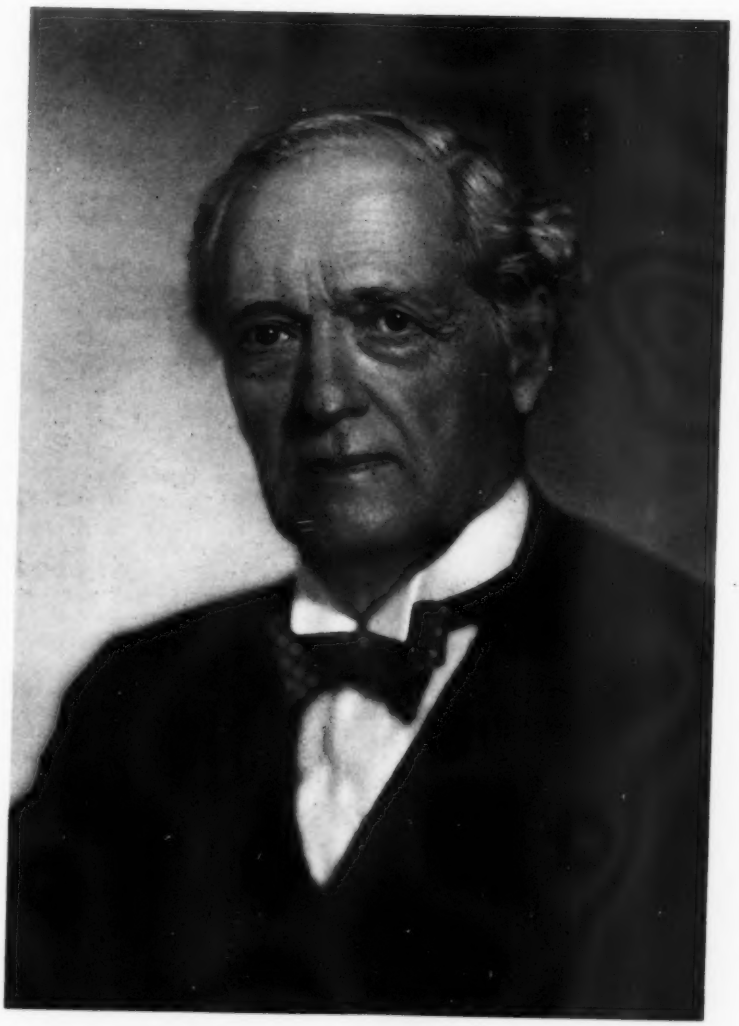
In practice, if one excepts weekly tenancies and the like, most payments of rent are made by cheque. In law, though modern leases do not contain the words "well in hand truly pay in lawful money of Great Britain," the risks thereby incurred are such that it may be as well that the tenants concerned are ignorant of them.

It was laid down in *Gage* v. *Acton* (1700), 1 Salk. 326, under the title "Extinguishment," that an executor sued for rent could not plead a bond due to the deceased, because a debt for rent was of equal degree to a specialty debt. This was applied in *Davis* v. *Gyde* (1835), 2 A. & E. 623, a replevin action in which the plaintiff's case was that he had given, and the defendant had accepted, a promissory note which was still current at the time of the distress. He did not allege any agreement to suspend the right to distrain, and was held that the "inferior" debt could not discharge the liability for rent.

Whether any agreement was made or implied, and, if so, what agreement, has always been of importance in these cases. The point was closely examined in *Drake* v. *Mitchell* (1803), 3 Ea. 251, which was an action for rent due under a mining lease. The defence (as to part of the claim) set up the making of a promissory note by one of the defendants; its delivery to the plaintiff; its subsequent dishonour; an action by the plaintiff against the defendant on the note in question; judgment in the action in the plaintiff's favour; and the fact that the judgment still remained in force and effect, not reversed or annulled. On this it was argued that a judgment recovered being of a security of a higher nature than a covenant, the new action was barred. But, as was held, if the promissory note was given in satisfaction, it had not been accepted in satisfaction of the debt for rent; and a judgment which did not produce satisfaction left the original remedy on the covenant available to the creditor.

Davis v. *Gyde* was cited in the judgment of Farwell, L.J., in *Henderson* v. *Arthur* [1907] 1 K.B., 10 C.A., an action for rent in which the defendant relied on a verbal antecedent agreement to accept three months' bills for rent which the lease made payable in advance. The decision of the Court of Appeal, reversing that of the High Court, rested substantially on the inadmissibility of evidence of the verbal agreement; but in so far as the court below had held that that evidence could be heard because the word "pay" in the covenant sued on might mean "pay by bill," Farwell, L.J., pointed out that the legal implication of assent that a bill shall operate as a conditional payment did not arise when the plaintiff would be deprived of a better remedy than an action on the bill—which was the case when the debt was for rent.

One would have expected that the difference in nature and rank between the obligation to pay rent and the obligation to honour a bill or cheque would have played a considerable part in *Papè* v. *Westacott* [1894] 1 Q.B. 272, C.A. The facts were that a tenant, bound by a covenant against assigning without his lessor's consent, applied for a licence. The lessor, plaintiff in the action, instructed the defendant, a house agent, to make the usual inquiries; these proved satisfactory, the defendant prepared the licence, the plaintiff signed it and returned it to the defendant; but before completion of the assignment the plaintiff's wife noticed that the tenant was removing his goods, and she went round to the defendant and told him not to part with the licence till he got the rent. At the completion the defendant accepted a cheque from the assignor, for an amount representing the rent due and the agent's charges, while a far fatter cheque representing the purchase price was handed to the assignor by the assignee. The latter instrument, however, did not find its way to the drawee's bank, and the cheque for rent (and charges) was not met. The action was for negligence and exceeding authority.



Mr. FRANCIS EDWARD JAMES SMITH, M.A. (Oxon),
Solicitor,
President of The Law Society, 1937-8.

The issue of liability turned on the question of an agent's authority to accept payment by cheques, and was decided in the plaintiff's favour without reference being made to the nature of the debt. It was only on the question of measure of damages that the law of landlord and tenant was cited. It was argued for the defendant that the plaintiff had lost nothing, because he could still distrain, namely, on the assignee's goods; but this was considered "perfectly outrageous" by Lord Lindley, L.J., who held that the landlord was estopped from such a course by having, in effect, said to the proposed victim: "I have settled with the outgoing tenant; you can bring your things in." The measure was held to be the rent lost.

In all the above cases the drawee of the instrument succeeded; but, as will have been noticed, there is always a possibility of victory for the drawer, if he can satisfy the court of an agreement to accept the cheque or note as payment or conditional payment. Thus a landlord was unable to enforce a note in *Palfrey* v. *Baker* (1817), 3 Price 572; the note had been given by the defendant and the tenant jointly on the occasion of a distress, in order to prevent a sale; when the next gale of rent fell due, the plaintiff distrained on the same goods and sold them for more than the amount of the note. In the action it was held that the proceeds must go to discharge the debt for which the note was given, namely, the old rent: the note was a collateral security and ceased to have effect when the highest remedy was employed.

Then, while no cheque or other negotiable instrument played a part, *Eyles* v. *Ellis* (1827), 4 Bing. 112, illustrates what may happen if a landlord should ask for a "cheque in settlement." The plaintiff requested the defendant, his tenant, to pay rent into his (the plaintiff's) bank; the defendant, being a customer of the same bank, instructed them to make a transfer of the amount, wrote and told the plaintiff that he had done so, and the plaintiff then sent him a receipt. Owing to a mistake, the bank had not then effected the transfer; the defendant told them to rectify the error and they duly placed the money in the plaintiff's account. This was on the 8th of December. On the 9th, the defendant wrote and despatched a letter to the plaintiff telling him the mistake had been rectified; on the 10th, the bank failed; on the 11th, the letter was delivered. Here it was held that payment of the rent had been made, in the manner agreed; for the landlord could have drawn the money on the 9th December.

Lastly, while *Davis* v. *Gyde* decided that a negotiable instrument may not suspend the right of distress, it did not lay down that it cannot afford evidence of an agreement to that effect, for no such agreement had been pleaded and the point was decided on demurrer. This was pointed out in *Palmer* v. *Bramley* [1895] 2 Q.B. 405, C.A., a replevin action brought by the assignee (in trust for creditors) of a tenant. The tenant had, at the defendant's own suggestion, given a two months' bill for an amount representing two quarters' rent, of which one gale was due at the time. The distress was levied before the bill matured. As Kay, L.J., put it: "I do not say that the taking of the bill of exchange was conclusive evidence . . . The question was, what was the intention and object of the giving of the bill of exchange; and all the facts, including the fact of the giving of the bill, should have been before the jury."

The distress in the last-mentioned case was in respect of the overdue rent only. Further complications might have arisen if an action had ever been brought on the note when it became payable; for the payment of rent in advance when not so reserved is a nullity. Indeed, one of the reasons for examining this question of payment of rent by cheque is the position which results from the joint operation of the law relating to negotiable instruments, the law relating to rent, and the dates of the usual quarter-days. Take, for instance, the Christmas rent: the tenant who pays his landlord the amount of one quarter's rent before the festival runs the risk of having to pay his landlord's executor or trustee in bankruptcy the same amount again at a later date; the tenant who sends a cheque which reaches his landlord on the 25th December may be visited by brokers on Boxing Day. So the law and the ordinary lease impose upon him the duty of seeking out his landlord and paying him in cash on a day which most people now devote to other pursuits.

Our County Court Letter.

THE CONTRACTS OF SCHOOLMISTRESSES.

In *Smith* v. *Mills*, recently heard at Wellington County Court, the claim was for £36 15s. for wrongful dismissal. The plaintiff's case was that she had taken a post as mistress at Merevale College, beginning on the 18th January, 1937, the engagement being terminable by a half-term's notice or its equivalent. It was agreed in writing, *inter alia*, that the plaintiff should share in all school duties and attend church services of the school. The employment was terminated on the 31st January, and the plaintiff's case was that, even if the complaints against her were proved, there was no justification for summary dismissal. The plaintiff had been accustomed to attending services at 11 a.m. and 6.30 p.m., but not a communion service at 8 a.m. without an express stipulation to that effect. The defence was that the plaintiff refused to attend church services on the 24th and 31st January; failed to correct pupils' exercise books on the 25th and 30th January; was intentionally late for meals and had gone to bed during school hours as a protest against the rules. The plaintiff had written: "Will you accept my apology and allow me to remain? I do admit I have been foolish and unreasonable, but just lately I have not been well." His Honour Judge Samuel, K.C., gave judgment for the defendant, with costs.

THE REMUNERATION OF ARCHITECTS.

In *Longden* v. *Cooke and Kent Grant & Co. Ltd.*, recently heard at Newcastle-under-Lyme County Court, the claim was for £70 10s. for professional services and the counter-claim was for damages for neglect and failure to use reasonable skill and care. The plaintiff's case was that the amount claimed was the balance of an account for £105 10s. for professional services as an architect. The first defendant was the managing director of the defendant company, which had bought some land for £2,000. The sale was negotiated by the plaintiff, and the vendor, in order to preserve the amenities, had stipulated that no buildings should be erected without the plaintiff's approval. The plaintiff later prepared plans for three pairs of dwelling-houses on the basis of £1 per 100 square feet of floor space, plus 4 per cent. of the total cost. In July, 1936, an account was paid on that basis, and no complaint was made until the 18th December, when other accounts were rendered. The defence was that the plans were to be prepared on the basis of £12 per house and no mention was made of 4 per cent. charges on cost. The usual price was £5 5s. per house for plans. In one pair of houses the projecting gables were constructed in timber, instead of brickwork, and an additional 100 square feet of land had to be purchased, to overcome a contravention of a bye-law. His Honour Deputy Judge Burne, gave judgment for the plaintiff on the claim and counter-claim, with costs.

WARRANTIES ON SALE OF HORSES.

In the recent case of *Blowers* v. *Lusher*, at Bungay County Court, the claim was for £44 as damages for breach of warranty on the sale of a four-year-old brown Shire mare and for special damage, viz., the value of 50 gallons of milk at 1s. 1½d. a gallon which the plaintiff had sold, but which were lost

through the mare bolting when in the shafts of a lorry. The plaintiff's case was that he bought the mare with an oral warranty that she was a good worker and quiet in all gears. Nevertheless she jumped and bucked when put on the plough, and when put in a four-wheel milk lorry she bolted and upset the load. The mare was therefore returned to the defendant within seven days. The defence was that there was no warranty; alternatively, if there was one, the mare was up to it. The defendant's son had used the mare on the plough, harrow and drill and also in a tumbril without trouble. A counter-claim was therefore made for keeping the mare at 6s. a week. His Honour Judge Rowlands held that the mare could not be described as quiet, and the plaintiff was entitled to damages. It would be best, however, for the defendant to keep the mare and return the £44. The claim for loss of milk was not pressed, and judgment was given for the plaintiff for £44 and costs, the counter-claim being dismissed.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

PERSONAL INJURIES FROM DANGERS UNDER-FOOT.

In a recent case at Reading County Court (*Beckford* v. *Reading Co-operative Society Limited*) the claim was for damages for negligence. The plaintiff's case was that, while visiting the defendants' shop on the 6th May, 1936, she caught her foot in the iron band round the forecourt, and sustained injuries in falling, and had had massage until February, 1937. Corroborative evidence was given by another shopper, who, on the 12th July, 1935, had tripped over the same iron band and had claimed damages. The defence was that the iron band was laid before the shop was opened in May, 1935. The pavement was then in a bad condition, and the projection had resulted from the sinkage of tarmac laid by the corporation. Only two complaints had been received, and there had been contributory negligence by the plaintiff, as she had not used ordinary care in tripping over something plainly visible. The projection had since been levelled off. His Honour Judge Cotes-Preedy, K.C., held that there was no evidence of contributory negligence, and it was not clear why, after the first accident, the iron band was not recognised as a source of danger. Judgment was given for the plaintiff for £52 10s. general damages plus agreed special damage of £24 0s. 6d., with costs. It transpired that the parties had agreed that the court should have jurisdiction up to £150, but not that that sum should necessarily be awarded if liability were established.

REFERENCE TO MEDICAL REFEREE.

In *Highley Mining Co.* v. *Evans*, at Bromsgrove County Court, an appeal was heard against the refusal of the Kidderminster registrar to refer the matter to a medical referee. The case for the appellants was that they had paid full compensation from April to July, 1936. The respondent was then certified as fit for light work, and, being employed on the surface, his compensation was reduced from 24s. 2d. to 6s. 3d. a week. He continued at work until April, 1937, when he was certified by the appellants' doctor as fit to resume pre-accident work. His own doctor contended, however, that he was only fit for light work, and the respondent applied for arbitration. The existence of this application was held by the registrar to be a ground for refusing a reference. The appellants' case was that there was no right to arbitration, but the respondent's case was that the exceptional nature of his pre-accident employment constituted "other sufficient reason" apart from medical grounds within the proviso to s. 19 (2) of the 1925 Act. His Honour Judge Roope Reeve, K.C., allowed the appeal, and held that the case was not exceptional, and should be referred to a medical referee.

Practice Notes.

AMENDMENT OF PLEADINGS.

It is never too late to ask to amend—even at the hearing, provided that there is no injustice to the other side which cannot be compensated by costs. This principle cannot be iterated too frequently; although the words of the relevant rule are clear, amendments at the hearing are not always viewed with favour. The observations of the Court of Appeal, accordingly, in *Hunt* v. *Rice & Son, Ltd.* (1937), 53 T.L.R. 931, upon the duty of a judge when amendment is sought, will be welcomed.

A builder's labourer was injured in an accident while rubbish was being cleared out from a trench dug in connection with the erection of blocks of flats. Soil or gravel suddenly fell upon him from one side of the trench; he was knocked down and died later. His widow claimed damages under the Fatal Accidents Act, 1846, and, alternatively, under s. 1 of the Employers' Liability Act, 1880. That section gives a remedy (broadly speaking) when a workman is injured by any defect "in the condition of the ways, works, machinery or plant," or, again, by reason of the negligence of a superintendent. The writ was issued in January, 1935. Before the action came on for trial, the plaintiff wrote to the defendants, in January, 1937, asking for leave to amend the statement of claim by relying on regulation 46 of the Building Regulations, 1926, made under the Factory and Workshop Act, 1901. That regulation imposes a duty to timber the sides of a trench where machinery is temporarily being used for the construction of a building, machinery worked by mechanical power, such as cement mixers or pneumatic drills, as the plaintiff here alleged. MacKinnon, J., having refused leave to amend, found that there was no negligence in not timbering the sides of the trench.

The Court of Appeal ordered a new trial on the ground that the learned judge misdirected himself on the evidence in not finding that the contractors negligently failed to examine the adjoining ground in order to see that there was no risk of the trench falling in.

Greer, L.J., pointed out that on ordering a new trial, the parties would each be entitled to amend their pleadings and to call further evidence. He thought, however, that the judge was entitled to refuse to allow the amendment sought at the hearing: there had already been ample time to raise the matter.

Slesser and Scott, L.JJ., on the other hand, expressed the view, supported both on principle and on authority, that the amendment should have been allowed. With respect, their reasoning appears to be right. The presence of cement mixers could have been raised without injustice to the defendants; it might have been answered by them and it raised the real question between the parties.

By Ord. XXVIII, r. 1:—

> "The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

Two points are obvious on the face of the rule itself: first, leave may be given at *any* stage, i.e., including the hearing; secondly, leave *must* be given when the amendment is necessary and can be made without injustice.

Ultimately, it is a matter of discretion for the learned judge; but, as the House of Lords has recently laid it down in *Evans* v. *Bartlam* [1937] A.C. 473, although normally the Court of Appeal will not interfere unless the judge acted upon a wrong principle of law,

> "Yet if it sees that on other grounds the decision will result in injustice being done it has both the power and the

duty to remedy it" : per Lord Atkin, at p. 481. (See also per Lord Wright, at pp. 486, 487.)

Slesser, L.J., in support of the power of the Court of Appeal to overrule the discretion of the trial judge and to grant the amendment, cited two dicta : a dictum of Jessel, M.R., in *Laird* v. *Briggs* (1881), 19 Ch. D. 22 (at p. 28), that "every injustice was serious," but that the Court of Appeal will not interfere in a "trivial matter," and an observation of Lord Bramwell in *Australasian Steam Navigation Company* v. *Smith and Sons* (1889), 14 A.C. 318 (at p. 320) :—

> "Their lordships are strong advocates for amendment wherever it can be done without injustice to the other side, and even when they have been put to certain expense and delay, yet if they can be compensated for that in any way . . . an amendment ought to be allowed for the purpose of raising the real question between the parties."

Scott, L.J., agreed that the amendment should have been allowed as "a matter of justice" and not "as a mere matter of discretion." The litigant should be considered and justice be made to appear reasonable to him ; if that meant hardship on the other side, costs and an adjournment could compensate. He further cited a passage from the judgment of Brett, M.R., in *Clarapede and Co.* v. *Commercial Union Association*, 32 W.R. 262, at p. 263 :—

> "However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no real injustice if the other side can be compensated by costs."

Land and Estate Topics.

By J. A. MORAN.

THE autumn season for the disposal of real estate has got into its stride, and as announcements of coming sales are accumulating, there is no longer any doubt that we are on the eve of a very busy time. One expects a falling off in the number of large rural residential domains put up to auction at this time of year, but it is the other way about when we come to building land, small house property and the gilt-edged freehold ground rent, for which there is now quite a big demand. The ground rent is much favoured by the small investor, and the large property companies are very active competitors ; it is no wonder, therefore, that values continue to maintain a high level.

Every credit should be given to the efforts that are being made all over the country to provide suitable homes for those displaced from the slums, but, unfortunately, serious objection must be taken to the policy sometimes adopted. From far and near, complaints are being made by ratepayers that the £300 house, which, of necessity, is a plain unattractive habitation, is placed within a few yards of houses that are worth from five to seven times that amount. This is more than hard on the owners of the latter, as it brings the habits of slumland close to their doors, and thus depreciates the value of the holdings. After all that is said and done, the work of slum clearance is an easy matter, but the judicious placing of the dispossessed seems to be beyond the power of many town councils, and it is full time their persecution of innocent parties should be put a stop to.

A high record of progress in re-conditioning agricultural workers' cottages under the Housing (Rural Workers) Acts was reached during the quarter ending 30th June, according to figures just published by the Ministry of Health. Returns from local authorities show that during this period, applications for grant under the Acts were made in respect of 1,224 dwellings—an increase of nearly a third over the previous highest figure, which was for the quarter ending 31st December last. The total number of dwellings in respect of which grants or loans have been promised is now 15,056.

The purchaser of a new "ideal home" was not satisfied until she had an electric cooker installed on the premises. Next morning the charlady was asked her opinion of it. "To tell you the truth, ma'am," she replied, "I don't 'old with them. My sister has one, and I always tell her that everything she cooks in it tastes of electricity."

For the theft of a coping stone, valued at sixpence, from a wall on the estate of Lord Wemyss, a woman was fined 10s. by the Winchcombe Bench. She was also ordered to pay 30s. costs. The estate agent told the court that a great deal of trouble and expense had been caused by similar thefts, and I commend his excellent, if belated, example to other interested parties.

The Lisbon municipal council has decided that, in future, no more than two lapdogs, "dogs of luxury," are to be permitted in one domicile. Nothing is said, however, as to what will happen if the pets should multiply.

The housing estates of the Westminster City Council have been, for some time, under the management of Miss M. R. Baskett, and the annual report discloses the astonishing fact that, on a rent roll of £40,000, all that was owing at the end of the financial year was 9s. 8d. Many property owners will envy the Westminster Council their good fortune. Still, all things considered, I'm in favour of a man for a job of that kind.

If one's heart is set on possession of a windmill, and a stiff price is asked for the one in mind, it is well to remember there are nearly a thousand windmills in the country, most of them out of action and many in ruins. It should also be borne in mind that the millers' trade has moved very fast since wind power was a leading motive power, and it is by no means easy to divert business back to the old channels. The mill beyond repair may add to the charm of a landscape, but this should not have much effect on its value.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Law in Detective Stories.

Sir,—Your article entitled "Lord Peter Wimsey and the Administration of Estates Act, 1925," is very interesting, and I agree with your contributor's statement of the law. I have not read the novels to which he refers, but I would suggest that a novelist's law may not be quite as impossible as it may appear to a lawyer. I remember reading some articles—or correspondence—criticising the entail in "Pride and Prejudice" (Jane Austen) on the ground that no one could envisage one which would bring about the result the authoress stated, unless intentionally drafted with the object of doing so. I have—acting for purchasers—come across a case in which the tenant for life's daughters (claiming in the male line) were disinherited in favour of cousins (claiming in the female line), i.e., Mr. Collins ousted the Misses Bennett ; the terms of the settlement were not at all unusual.

26th September. SOLICITOR.

Sir,—The errors in law dealt with in your interesting article on "Lord Peter Wimsey and the Administration of Estates Act, 1925," seem to me to be venial compared to those which I have just come across in "The Bath Mysteries" by E. R. Punshon, the author of a number of novels and detective stories.

At the very beginning of the book, the hero, Bobby Owen, a detective sergeant and son of a peer, approaches the ancestral mansion, an eighteenth century London house, lamenting that it is still there. If the family could only sell it, it could be demolished and a block of luxury flats erected

on its site. But "owing to legal complications, jointures, mortgages, reversions, and Lord knows what," it was impossible to sell it, without going to the expense of getting a private Act, which would swallow up all profit. Comment on this remarkable statement would seem superfluous.

But this "howler" does not affect the story; the other one simply demolishes it. The idea, which is apparently taken from the "Brides in the Bath" case, is that there is someone, hiding behind a syndicate, who entraps several people in succession into insuring their lives, always for £20,000, getting an assignment of the policy, and then murdering them by drowning or electric shock in their baths. There being for a long time no suspicion of foul play, the insurance companies concerned, though they do not like it, pay up. The real criminal is eventually traced down to a *soi-disant* doctor of philosophy, who has not the ghost of an insurable interest in any of his victims. It has evidently never occurred to the writer that he need have any such interest.

In the one case the writer assumes a prohibition which cannot exist in law; in the other a power to do something rendered illegal and void in 1774.

H. Langford Lewis.

New Square, W.C.2.
September 28th.

Pedestrian Crossings Unofficially Controlled.

Sir,—In the recent case of *Bailey* v. *Geddes* [1937] W.N. 317; 81 Sol. J. 684, the Court of Appeal decided, in effect, that under the Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935, the driver of a vehicle who knocks down a pedestrian on an "uncontrolled" pedestrian crossing cannot set up contributory negligence. Such is the effect of regs. 3 and 4.

It is well known that where the crossing is "controlled" the position is different; under reg. 5 "The driver of every vehicle at or approaching a crossing at a road intersection where traffic is for the time being controlled by a police constable or by light signals shall allow free and uninterrupted passage to every foot passenger who has started to go over the crossing before the driver receives a signal that he may proceed over the crossing." Therefore it may be inferred that a pedestrian who crosses a stream of traffic at a controlled crossing does so at his own risk.

But it is worth observing that reg. 5 deals with a case where the traffic is "for the time being controlled *by a police constable or by light signals*." Nothing is said about A.A. or R.A.C. scouts, who may sometimes be seen controlling crossings in country towns. Consequently where such a scout is directing the traffic at a "Belisha" crossing the crossing is within reg. 4 and not reg. 5. Therefore, if pedestrians are about, a driver proceeds across the crossing-place at his peril, and if he knocks a pedestrian down, *Bailey* v. *Geddes* applies. Ought not the regulations to be amended in this respect?

Rustic.

Reviews.

The National Defence Contribution. By G. H. Newsom and Cecil H. S. Preston, Barristers-at-Law. 1937. Demy 8vo. pp. xx and (with Index) 84. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

At the present time both solicitors and accountants are receiving inquiries relating to the National Defence Contribution, and although this new tax is founded, at least in part, on schemes of taxation which have formed the subject of considerable judicial notice in the past, the task of searching for the appropriate authority on any one of the many phases of the new tax is by no means an easy one. The present volume, therefore, will be very welcome in legal and accountancy circles, the more so since its authors have set about their task of shedding light on a particularly obscure piece of legislature in a very methodical and businesslike manner. The book is divided into three parts. In the first part the authors have attempted, with marked success, to give the reader a bird's-eye view of the new tax. The second part contains a reprint of the relevant sections and schedules of the Finance Act, 1937, with copious notes and cross-references, whilst the third part is devoted to certain mathematical tables, including tables of abatement of profits, carry-forward and set-off of losses and the like, which cannot fail to be of interest and utility to those readers who are required to apply the N.D.C. provisions to practical examples. We are particularly impressed with the lucid notes on the various sections and schedules in the second part of the book, and these should prove extremely helpful in guiding the busy practitioner through the intricacies of this outstanding example of the draftsman's art. The work is not over-burdened with, nor are the issues confused by, a discourse on the law and practice of income tax, for the authors have rightly inferred that anyone attempting to deal with the N.D.C. must of necessity have a working knowledge of that subject. The book is complete with a particularly full index, which, if we may say so, is a feature that is often sadly lacking. We can thoroughly recommend the book to all who are required to deal with the N.D.C., and we shall be surprised if it does not find its way on to the majority of legal and accountancy practitioners' bookshelves.

Speaking after Dinner. By C. Kent Wright, Town Clerk of Stoke Newington. Illustrations by Barbara Moray Williams. 1936. Crown 8vo. pp. (with Index) 276. London: George Allen & Unwin, Ltd. 6s. net.

This is a selection of epigrams and short extracts from literary works on a wide variety of subjects which Mr. Kent Wright has collected from all sources and arranged under suitable headings. One section is devoted to Doctors and Lawyers, another to Food and Drink, another to The Ladies, and so on. The book, we are told, was compiled by the author chiefly for the use of after-dinner speakers; it will, however, provide entertainment for all readers who appreciate a good story or a well-turned phrase.

Fingerprints. The Numerical Index of Fingerprints Revolutionised. By F. Brewester. 1936. Royal 8vo. pp. viii and (with Index) 242. Calcutta: The Eastern Law House. Price, Rs. 5.

This is a careful and thorough study of a fascinating subject. The clearness and detail of the exposition establish the reputation of the author as an expert. A book helpful to all those who are engaged in the administration of the criminal law, and comes in useful sometimes in matters of probate. Every aspect of this new factor in forensic procedure—the fingerprint—receives adequate treatment, complete with photographic illustrations, theoretical sketches and reported cases. In several respects it is an original and valuable contribution to jurisprudence.

The King has approved the recommendation of the Home Secretary that Mr. John William Morris, K.C., be appointed an additional Judge of the High Court of Justice of the Isle of Man, to be styled the "Judge of Appeal," in accordance with the provisions of the Judicature Amendment Acts, 1918 and 1921 (Isle of Man), in place of the late Mr. R. K. Chappel, K.C. Mr. Morris was called to the bar by the Inner Temple in 1921, and took silk in 1935.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Notice to Quit Farm.

Q. 3495. A and B in 1905 entered into the tenancy of farm land and buildings on the usual terms, subject to six months' notice expiring (as to land) on the 2nd February and (as to buildings) on the 1st May. A died some years ago, and B died in March of this year, leaving his daughter and son-in-law in occupation of the land. The owner intimated to B's daughter that she could not be considered as a tenant but would be allowed to remain on the property until February (as to land) and May (as to buildings), 1938. In view of the provisions of the Agricultural Holdings Act, 1923, we shall be obliged for your opinion as to whether it is necessary to give notice to B's daughter to give up possession of the premises, and if so, whether it will be necessary to observe the provisions of the Act and give a full twelve months' notice. Also, whether the present occupants of the land are entitled to any compensation on relinquishing the tenancy. The present owner is contemplating a sale, and we shall also be obliged to know if any notice ought to be given before or after the sale takes place. Reference to any forms will be appreciated.

A. As the occupation of the land was to be from March, 1937, to May, 1938, the period was less than a year, and the Agricultural Holdings Act, 1923, is inapplicable. The occupation of the buildings, however, was to run from March, 1937, to May, 1938, i.e., more than a year. The above Act would therefore apply, if the buildings formed the principal subject of the demise. A question of fact may therefore arise as to whether the land or the buildings were the principal subject of the demise. A further question of fact may arise as to whether the owner intimated to B's daughter that she would not be considered as a tenant. Her version of the arrangement may be different from the owner's version. As a sale is contemplated, vacant possession cannot be safely offered before May, 1939. A full twelve months' notice will be required under the Act, and the present occupant will be entitled to compensation. Notice to quit should be given before the sale. A form is given in " Agricultural Holdings and Tenant Right Valuation " by Jackson, 7th ed., p. 342.

Disclaimer of Lease.

Q. 3496. I act for the landlord of certain premises and the tenant has recently been adjudicated bankrupt. The bankrupt had, without the landlord's consent, sub-let the property at a rent less than the rent payable under the lease. The trustee in bankruptcy is collecting rent from the sub-tenant, and I have been pressing him to disclaim the lease in order that my client can re-let the property. After considerable correspondence and time had elapsed the trustee has served a notice of intention to disclaim on my client and the sub-tenant. My client and the sub-tenant are willing for the lease to be disclaimed at once. The trustee states that the disclaimer cannot be filed until fourteen days have expired. In the meantime the trustee is collecting the rent, and I shall be glad to know whether he is to account to my client for the same or whether he must prove in the bankruptcy. Also, is it a preferential claim. I may say that an application was made to the trustee to disclaim within twenty-eight days and I contend that he is now personally liable for the rents and the covenants in the lease. He contends that he has twelve months within which to disclaim under s. 54 of the Bankruptcy Act. I shall be glad to know what is the legal position with regard to the rents collected by the trustee from the sub-tenant and generally.

A. Until the lease is disclaimed the landlord has no immediate rights in the property. The trustee is not accountable to the landlord for the rent from the sub-tenant, which will be an asset available for the general body of creditors. The landlord must prove in the bankruptcy for his rent, which is not a preferential claim. The landlord, however, can distrain for six months' rent accrued due prior to the bankruptcy, and a trustee will usually agree to pay this to avoid a distress. In view of the trustee's failure to disclaim within twenty-eight days he appears to have become personally liable for the rent, as the questioner suggests (see *In re Page* (1884), 14 Q.B.D. 401). The rents collected by the trustee from the sub-tenant are not impressed with a trust in favour of, or otherwise earmarked for, the landlord. The question does not state whether the failure to obtain the landlord's consent was a breach of covenant. If it was, a right of re-entry has apparently arisen.

Grant of a Rent-charge by a Company by Way of Seisin of the Company to a Use—Effect.

Q. 3497. By a conveyance made in 1908 certain freehold property was granted by the owners (trustees of an estate) to A.B., Ltd., a company registered under the Companies Act, reserving thereout a yearly rent-charge. The habendum reads as follows: " To hold the said hereditaments unto the said company their successors and assigns to the use that the said trustees their heirs and assigns shall receive a clear perpetual yearly rent-charge of £— payable, etc., etc. . . . and to the further use that if any part shall be unpaid for twenty-one days, etc. . . . And to the further use that if any part of the said rent-charge shall be unpaid for forty days, etc. . . . And subject and charged as aforesaid To the use of the said company its successors and assigns in fee simple for ever." Since the conveyance was executed we understand the company has been wound up and the property, etc., taken over by another, C.D., Ltd. C.D., Ltd., for many years have paid the yearly rent-charge and have now agreed to purchase the same and it appears to us it will merge. However, the solicitors to C.D., Ltd., point out to us that the yearly rent-charge is not properly created. The Statute of Uses only operates " where any person or persons . . . shall stand or be seized of and in any . . . hereditaments, etc.," and consequently a corporation (including, of course, a company incorporated under the Companies Act) cannot be seized to a use. Please inform us—

(1) Is the conveyance in proper form?

(2) If not, in view of payment of the rent for twenty-nine years and the merger of the rent in the purchaser company, can the form of the conveyance be seriously challenged at this time?

A. (1) No. The use would not be executed because the seisinee to uses was not a " person " within s. 3 of the Statute of Uses: *Fulmerston* v. *Steward* (1554), Plowd. 102.

(2) We do not think so. It seems probable that the trustees took the legal interest in the rent-charge under L.P.A., 1925, s. 39, and Sched. I, Pt. II, para. 3. See the definition of " legal estates " in s. 205 (1) (x). A rent-charge is a legal interest or charge: L.P.A., 1925, s. 1 (1) (*b*).

To-day and Yesterday

Legal Calendar.

27 September.—The trial of a labourer named Thomas Molony, for the murder of his wife, at the Old Bailey, on the 27th September, 1861, produced some extraordinary evidence. He declared that she had stabbed herself after he had rebuked her for her drunken habits and on the medical evidence he would probably have been acquitted but for the story of a stranger named Saunders, a labourer, who said that he had been seeking lodgings in the court where the accused lived and had actually seen him stab the woman. As he had raised no alarm his evidence was gravely suspect, but despite severe examination by Byles, J., he stuck to it and Molony was convicted. The case was so doubtful, however, that the sentence was commuted.

28 September.—On the 28th September, 1334, John de Stratford, Archbishop of Canterbury, appointed Lord Chancellor when the young King Edward III threw off the tutelage of his mother and her favourites, resigned the Great Seal after a tenure of four years. Twice more he was to hold the office before his death in 1348. Although affairs of state left him little time to attend to legal work he had previously proved his judicial capacity as Dean of the Arches.

29 September.—On the 29th January, 1683, Mr. Justice Jones was appointed Chief Justice of the Common Pleas. We are told that he "was a very reverend and learned judge, a gentleman and impartial, but being of Welsh extraction was apt to be warm and when much offended often showed his heats in a rubor of his countenance set off by his grey hairs but appeared in no other disorder for he refrained himself in due bounds and temper and seldom or never broke the laws of gravity." In troubled times he had steered a judicious course, professing to be well affected to the Commonwealth while it lasted and on the Restoration declaring himself a devoted royalist.

30 September.—On the 30th September, 1878, Mr. Justice Keogh died at Bingen-on-the-Rhine after a long and distinguished career in the Irish Courts.

1 October.—Few would recognise in Dr. Johnson's Buildings (that dingy piece of workhouse architecture which has too long disgraced the Temple) the "noble range of chambers" which the benchers considered they were erecting in place of the decayed buildings that previously occupied the site. The sale of the fittings of the old chambers on the 1st October, 1857, drew together an interested crowd by reason of the literary associations with Dr. Johnson who had once lived there. The worm-eaten floorings and mouldings of his set were sold for £10 5s. The entablature was withdrawn from the sale to be preserved by the Benchers as one of the memorabilia of the Inn. What have they done with it?

2 October.—On the 2nd October, 1872, Mr. Justice Willes shot himself at his home at Otterspool, near Watford. His health had always been delicate and a particularly heavy assize at Liverpool had finally undermined his powers of resistance. The day before the tragedy his clerk had noticed his look of misery and depression, and early next morning he was the first to reach him when the house was disturbed by the sound of the shot. The dead judge had the highest judicial reputation.

3 October.—On the 3rd October, 1925, there died in Dublin, at the age of seventy-seven, The Right Hon. Stephen Ronan, formerly a Lord Justice of the Irish Court of Appeal, to which he had been promoted direct from the Bar. For years before his appointment his opinion had been regarded by his fellow countrymen as almost the equivalent of a judicial decision. His fault on the bench was that he was ever apt to diverge into the subtleties of argument.

The Week's Personality.

Even in the ferocious arena of Irish politics few men have aroused such bitter and unrelenting antagonism as Mr. Justice Keogh. Brilliantly talented, an eloquent speaker, an eager politician, he had been but seven years at the Bar when, in 1847, he was returned to Parliament for Athlone. To the Catholic Defence Association, the tenant-right movement and the Irish Nationalist Party, he gave, or seemed to give, all the support of his young enthusiasm. Then came a change. In 1852, at the early age of thirty-five, he became Solicitor-General for Ireland in Lord Aberdeen's ministry, and the reproach of renegade began to be attached to his name. Three years later he was Attorney-General and in 1856 a Justice of the Common Pleas. He now became the bitterest foe of Fenianism, agrarian disorder and the political influence of the Irish priesthood often using on the bench extreme and intemperate expressions of a completely unjudicial character. It was said that throughout his career as a judge he seemed "to be revenging himself for the moral degradation to which he had submitted by the professions of patriotism he had been compelled to make when climbing the political ladder." In private life he was kindly, warm hearted and full of humour, and even his enemies were shocked by the tragic fit of violent insanity which clouded the last months of his life.

A Lawyer's House on Fire.

Sir William Jowitt, K.C., has the sympathy of all his colleagues in the recent burning of his Kentish home. After being almost trapped in his room by the blaze in the library, he saved family and servants and then with their help fought the flames, while the Rye fire brigade turned out in sympathy, but regretted they could not attend a fire outside their district, and the Tenterden engine hastening to the rescue broke down on the way. He may have the melancholy satisfaction of reflecting that in the matter of his loss he is in excellent company. Did not Lord Mansfield lose a priceless legal library in the blaze of the Gordon riots? Did not Maule, J., in a temporary aberration burn down Paper Buildings? Was not Lord Eldon's home at Encombe destroyed by fire on a celebrated occasion, and did not Sir Thomas More suffer a similar loss when his barns at Chelsea and part of his house were consumed by the negligence of a neighbour's servant?

How They Looked at the Blaze.

More was at Woodstock when news of the disaster reached him, and his letter to his wife is charmingly characteristic. He wrote: "Albeit, saving God's pleasure, it is gret pitie of so much goode corne lost yet sith it hath liked hym to send us such a chance we must not only be content but also glad of his visitation. He sent us all that we have lost and sith he hath by such a chance taken it away againe, his pleasure be fulfilled . . . Therefore I pray you be of good cheere, and take all the howsold with you to church and there thank God both for that he hath given us and that he hath left us . . . " Lord Eldon looked at things from rather another direction, although he seems to have found a good deal of satisfaction in his own point of view. "It really was a pretty sight," he said, "for all the maids turned out of their beds and they formed a line from the water to the fire-engine handing the buckets; they looked very pretty all in their shifts." This was the occasion when for safety he buried the Great Seal in a flower bed and after the excitement was over forgot which one.

The first sitting at a metropolitan police court of a court of summary procedure devoted entirely to the consideration of domestic troubles will be held on Wednesday, 6th October, at Tower Bridge Police Court. Mr. W. H. S. Oulton will preside.

Notes of Cases.

Judicial Committee of the Privy Council.

Estate and Trust Agencies (1927), Limited *v.* Singapore Improvement Trust.

Lord Maugham, Sir Lancelot Sanderson, and Sir Sidney Rowlatt. 31st May, 1937.

STRAITS SETTLEMENTS (SINGAPORE) — HOUSING — DECLARATION THAT HOUSE INSANITARY—SUBMISSION FOR APPROVAL OF GOVERNOR IN COUNCIL—WRONG GROUNDS—QUASI-JUDICIAL FUNCTIONS—DUTIES STILL REMAINING TO BE DISCHARGED—WRIT OF PROHIBITION—WHETHER WILL LIE —SINGAPORE IMPROVEMENT ORDINANCE, NO. 10 OF 1927, ss. 4, 57, 59-61.

Appeal from an order of the Court of Appeal of the Straits Settlements (Settlement of Singapore).

The appellant company were the owners of a certain house in Singapore. The respondents were a corporate body constituted by the Singapore Improvement Ordinance, 1927, and entrusted (by s. 4) with the duty of carrying out the provisions of that Ordinance. The proceedings were begun by the appellants by summons asking for the issue of a writ of prohibition directed to the respondents to prohibit them from further proceedings in respect of a declaration, made by the respondents in December, 1933, that a block of ninety-seven houses, including the appellants' house, were insanitary within the meaning of s. 57 of the Ordinance. In December the appellants duly objected in writing to the declaration, and requested to be supplied by the respondents with a statement in writing of the grounds on which the respondents had made the declaration. In January, 1934, the respondents furnished the appellants with a copy of the report of the acting municipal health officer on the house stating the grounds on which the house was declared to be insanitary. In February the respondents heard objections to the declaration. The appellants called expert evidence to prove that their house was not unfit for human habitation. The respondents called no evidence. At the conclusion of the arguments the respondents' chairman announced that consideration of the matter would be postponed until another day. Without giving any further notice of their intention, the respondents in June, 1934, informed the appellants that the declaration had been submitted by the respondents to the Governor in Council in May in accordance with the provisions of s. 59 of the Ordinance. On the following day notice was given by the appellants to the respondents that application would be made for a writ of prohibition against the respondents. The respondents' chairman stated on affidavit that the board had not acted only on consideration of the report submitted to them by the municipal health officer, and referred to the Manual on Unfit Houses and Unhealthy Areas issued officially by the Ministry of Health in England. Huggard, C.J., granted the writ, holding that the respondents had a duty to exercise judicial or quasi-judicial functions and were amenable to a writ of prohibition; that, as there was still something to be done by them, they were not *functus officio;* and that the declaration was *ultra vires* because the respondents had taken into account matters other than the condition and construction of the appellants' house. The Court of Appeal by a majority held, *inter alia*, that the respondents were *functus officio*, so that the application for prohibition was too late. The company now appealed.

LORD MAUGHAM, giving the judgment of the Board, said that it was reasonably clear that the respondents were acting in a ministerial or judicial capacity, and referred to the judgment of Greer, L.J., in *Errington* v. *Minister of Health* [1935] 1 K.B. 249, at p. 259, as pertinent and applicable. His lordship then held that the health officer's report appeared to be directed to a complaint other than that of fitness for human habitation. Not one of the matters referred to in the passages from the manual cited to by the respondents' chairman was incapable of remedy, and, on the other hand, there was not a single reference to those matters which generally rendered a house unfit for human habitation, such as a structure which is unsafe, a verminous condition of the materials, a pestiferous atmosphere, a state of things dangerous to health. Their lordships were not attempting to define the circumstances which rendered a building unfit for human habitation; they were merely giving reasons for thinking that the defects pointed out in the manual—defects which in fact existed in country cottages all over the world, and in a vast number of old towns—did not purport to afford a guide on the particular question with which the respondents had to deal. The conclusion on this part of the case was that the "grounds" on which the respondents made the declaration did not justify it. With regard to the contention that the respondents were *functus officio* when the writ was applied for, in the present case there were three duties with which the respondents might still be charged. Firstly, under s. 59 (5) they might appear at the hearing before the Governor in Council. Secondly, if the declaration were approved, they must, under s. 60 (1), cause the order approving the declaration to be presented for registration. In the third place, by s. 61, at any time after the registration of the order, "the Board may require the owner . . . by notice in writing to demolish [the building] within a period to be stated in the notice." Although there might be serious difficulties in ordering the writ to issue in respect of the first two matters, that was not the case with the third. Plainly, the power which the respondents had under s. 61 was of a discretionary character; and the Governor in Council had nothing to do with the exercise of that discretion. Nor would the respondents under s. 61 be carrying out the order of the Governor in Council, which could do no more than approve the declaration. The appeal must be allowed.

COUNSEL: *R. M. Montgomery*, K.C., *Storry Deans* and *H. D. Mundell* (Singapore), for the appellants; *Sir Gerald Hurst*, K.C., and *H. A. Hill*, for the respondents.

SOLICITORS: *Whites & Co.; Peacock & Goddard.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Secretary of State for India in Council *v.* Midnapore Zemindary Co. Ltd. and Others.

Lord Macmillan, Lord Maugham, Sir Lancelot Sanderson, Sir Shadi Lal and Sir George Rankin. 31st May, 1937.

INDIA — LAND REVENUE — LAND PART OF PERMANENTLY SETTLED ESTATE SUBMERGED BY RIVER—SUBSEQUENT REAPPEARANCE—WHETHER LAND "ADDED" TO ESTATE — WHETHER GOVERNMENT ENTITLED TO RE-ASSESS — BENGAL ALLUVION AND DILUVION ACT (IX OF 1847), ss. 5, 6.

Appeals and cross-appeals from decisions of the High Court, Fort William, Bengal.

The plaintiff company brought actions claiming, in respect of various lands, that they had the right of a permanent tenure-holder at a fixed rate of rent, and claiming a declaration that certain proceedings by the revenue authorities, which had resulted in the companys' rents being enhanced, were invalid. The lands in question lay beside a river, and had been part of a permanently settled estate. The revenue survey in the district in question made in 1853–54 showed the lands to be dry land of the revenue-paying estate. In 1867–68 there was another survey to ascertain the effect of fluvial action on the lands, which were then shown to be under water. Consequently, in 1871, a deduction was made in the revenue payable to the government by the zemindars, pursuant to s. 5 of the Bengal Alluvion and Diluvion Act (IX of 1847). The permanent tenure-holders neither received nor claimed any abatement of rent. In 1913 the locality was again surveyed, and the lands, having reappeared above water,

were treated by the revenue authorities as land "added to [an] estate paying revenue directly to government" within s. 6 of the Act of 1847. In 1919 the settlement officer fixed for the lands rents according to their value, disregarding the contractual rent fixed in perpetuity by the tenure-holders' leases. A much higher rent having thus been imposed on the tenure-holders, a corresponding assessment to revenue was made on the zemindars. The zemindars refused to settle on terms offered by the government, and the company brought the present proceedings.

LORD MAUGHAM, delivering the judgment of the Board, said that the company contended that the lands, being part of a permanently settled estate, could not validly be subjected to a fresh assessment of land revenue, notwithstanding that they had reappeared above water after abatement of land revenue had been granted while they were under water. The High Court rejected that contention (although the company succeeded in another), holding that, in view of the abatement of revenue granted in 1871 the lands were "added lands" within s. 6 of the Act of 1847. On that question the Board had carefully considered the Act in *Secretary of State for India* v. *Srimati Fahamidunissa Begum* (1889), L.R. 17, I.A. 40. It was sought by the appellant to distinguish the present case on the ground that there had here been an abatement of the land revenue since the permanent settlement. Lord Herschell's judgment in that case had laid no stress on the circumstance that there had there been no abatement since the permanent settlement, and it was held that lands originally part of a permanently settled estate "cannot be said to have been *added* to the estate to which they already belonged." It seemed to their lordships in the present case that the reasoning in that judgment must be regarded as of general application to lands part of a permanently settled estate, whether or not the revenue payable had been reduced because of the washing away of land from the estate—unless—the only possible qualification—it could be shown that, when the assessment was reduced, the lands which had been washed away had in some way ceased, on the making of the reduction, to form part of the original estate. What was the ground for contending that, when a reduction was made under s. 5 of the Act of 1847, in respect of lands submerged, there was any alteration in the title to the lands? Section 5 clearly did not purport to transfer the title to the site which had been covered by water. All that was predicated was that the land "has been washed away from . . . any estate . . ." The legislature must be taken to have been well aware that that alone would not avail to shift the title to the site to the government. On the other hand, in s. 6, the assumption was that land had been added to an estate (paying revenue to the government). Section 5 dealt, *prima facie* at least, with a loss of cultivable value, while s. 6 dealt with an acquisition of title by means of accretion. When, at the prescribed time, it appeared that land had been washed away from a revenue-paying estate, the revenue authorities were under the statutory duty "without loss of time" to make the deduction, no application by the zemindars being necessary. The Board were, therefore, unable to take the High Court's view that the effect of an abatement of revenue taken for the portion of an estate washed away was that it must be regarded as an abandonment of that portion of the estate for the benefit of the public domain. Section 5 was wholly silent as to any right being given up by the proprietor, and no such implication could be drawn. The appeals must be dismissed.

Four appeals by the company, which raised a point as to limitation, were allowed by the Board.

COUNSEL: *A. M. Dunne*, K.C., and *J. M. Pringle*, for the appellants; *L. de Gruyther*, K.C., and *S. A. Kyffin*, for the zemindary company; *H. R. Abdul Majid*, for the other respondents.

SOLICITORS: *The Solicitor*, India Office; *Burton, Yeates and Hart*; *Francis & Harker*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

J. A. Williams *v.* **Johnson (decd.) represented by Williams and Another.**

Lord Russell of Killowen, Lord Roche and Sir Lancelot Sanderson. 19th July, 1937.

WEST AFRICA—UNDUE INFLUENCE—DOCTOR AND PATIENT—GIFT OF LAND—PRESUMPTION OF INFLUENCE—INDEPENDENT LEGAL ADVICE—BURDEN OF PROOF.

Appeal by the defendant, J. A. Williams, from a decision of the West African Court of Appeal reversing the judgment of Webber, C.J., dismissing the plaintiff's action.

The action was brought in her lifetime by the deceased, then a widow of over eighty years of age. The defendant was a medical man who had attended the plaintiff in two illnesses. He was an intimate friend of the widow and made no charge for his professional services. Five months after the latter illness, she executed a deed by which she purported to convey certain land to the defendant for £1,500. In fact there was no sale. Eighteen months later the widow brought an action claiming to have the conveyance set aside on the ground that she executed it under the influence of the defendant, her medical adviser, without independent advice. The two issues tried were (1) whether plaintiff and defendant were in the confidential relationship of patient and doctor, and (2) whether the defendant had rebutted the presumption of the influence supposed, by reason of that relationship, to have produced the gift. Webber, C.J., held that there was no such relationship and that the presumption would in any event have been rebutted. The Court of Appeal took the opposite view on both questions. The defendant now appealed.

Sir LANCELOT SANDERSON, giving the judgment of the Board, said that their lordships agreed with the Court of Appeal as to the first issue. The principle which applied to the second issue was to be found in the judgment delivered by the Lord Chancellor in *Inche Noriah* v. *Shaik Allie Bin Omar* [1929] A.C. 127. It might be stated thus: Where the relations between the donor and donee had at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor, the court would set aside the voluntary gift unless it were proved that in fact the gift was the spontaneous act of the donor acting in circumstances which enabled the donor to exercise an independent will, and which justified the court in holding that the gift was the result of a free exercise of the donor's will. In that case, the questions were discussed (*a*) whether the presumption could be rebutted in any other way than by proof of independent legal advice, and (*b*) what constituted sufficient independent legal advice. The Board there had not been prepared to accept the view that independent legal advice was the only way in which the presumption could be rebutted; and they had not been prepared to affirm that legal advice, when given, did not rebut the presumption unless it were shown that the advice was taken. They had held that it was necessary for the donee to prove that the gift was the result of the free exercise of the independent will of the donor. The fact that the plaintiff here had had the advice of the independent solicitor whom she employed to draw up the deed could not be relied on as sufficient by itself to rebut the presumption of influence, because it was not proved that that solicitor had knowledge of all the relevant circumstances. It was, however, material to note that he had explained to her the other legal forms of carrying out her intention, e.g., by a will, which could be revoked. There was, however, one matter of very great importance which distinguished the present case from others in which a similar question had arisen. In this case both the donor and the donee, the plaintiff and the defendant, were available as witnesses and gave evidence at the trial. The Chief Justice did not believe the evidence of the plaintiff and he accepted unreservedly the evidence of the defendant. Their lordships saw no reason to dissent from findings given by one who was

in a much better position to judge the matter than they were themselves. The appeal should be allowed.

COUNSEL: *Harold Simmons* and *Pearl*, for the appellant; *R. O. Wilberforce*, for the respondent.

SOLICITORS: *Leader, Plunkett & Leader; Lawrence Jones and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.[

M. P. M. Murugappa Chetti and Another *v.* Official Assignee of Madras.

Lord Alness, Sir George Lowndes and Sir Shadi Lal. 22nd July, 1937.

INDIA—INSOLVENT COMPANY—FUNDS DEPOSITED WITH COMPANY ON BEHALF OF MINORS—AUTHORISATION TO INVEST FUNDS IN OTHER COMPANIES—USE BY COMPANY IN OWN BUSINESS—ACQUIESCENCE BY GUARDIAN—EFFECT.

Consolidated appeals from a decision of the Madras Court of Appeal varying an order of the Madras High Court.

The appellants were minor members of a joint Hindu family of which their grandfather was manager. In 1900, the grandfather transferred a total sum of Rs.76,000 to a firm which was adjudicated insolvent in 1925. There was no formal record of the terms on which the transfer was made, the appellants contending that it was an agency transaction under which the firm were to invest the money in other firms. The respondent official assignee contended that the firm were at liberty, under the transfer, either to invest the money in that way or to utilise all or part of it in the firm's own business. In 1915, as the result of a partition decree, three-sixteenths of the money were allotted to the appellants, and the grandfather became their guardian. The firm were told of the partition decree. In 1918 the grandfather died, no guardian being appointed in his place, although the appellants were minors until shortly before the firm was adjudicated insolvent. At the insolvency, Rs.44,503 were standing to the appellants' credit, and they claimed by petition that that sum was a trust fund in the insolvent firm's hands, and that it should be paid to them, with interest, by the respondent in priority to the claims of other creditors. Stone, J., granted the petition, but the Court of Appeal varied his order, holding that the appellants were only entitled to a portion of the amount as preferential creditors. The appellants and the official assignee now both appealed against that order.

The Board accepted on the evidence that the money was entrusted to the insolvents to invest in other firms; that they had no authority to employ any part of it in their own business, but that they did in fact render to the grandfather accounts showing the actual disposal of the money.

Sir GEORGE LOWNDES, giving the judgment of the Board, said that the respondent contended (A) that the facts established a new contract by which the grandfather authorised the insolvents to deal with the fund as they did, or, alternatively, (B) that the facts constituted such a ratification of the firm's dealings with the fund that the fund must be regarded, at the date of the grandfather's death, as merely a bank deposit with the firm. In support of the former contention, the judgment of Sir John Edge in *Haridas* v. *Mercantile Bank of India Ltd.*, L.R. 47, I.A. 17, was cited. There, however, all that the subsequent dealings were held to establish was a term on which the original contract was silent. A new contract, or a variation of the original, could not be proved by such means, even were the terms of the supposed new contract here less vague than was suggested. Nor could the doctrine of ratification be applied so as to turn the fund, originally held by the insolvents as agents in a fiduciary capacity, into a mere deposit with them on ordinary banking terms. There was nothing to show that the grandfather had had full knowledge of the facts (see s. 198 of the Indian Contract Act, which admittedly applied). It was also at least doubtful whether what the agents did could be regarded as acts done on the grandfather's behalf. Their lordships were, on the whole, satisfied that from the beginning the firm were, with regard to the whole fund, merely in the position of agents entrusted with it to invest, and that that relationship was still unchanged at the date of the grandfather's death, when they became trustees for the minors. It was unnecessary to consider the respondent's contention (not advanced below) that the appellants, in order to succeed, must trace the fund *in specie* in the hands of the insolvents at the date of their adjudication, because investigation of the accounts might have enabled the appellants to meet the objection. It was, therefore, unnecessary to consider where the burden of proof lay in such a case, or the question of any possible conflict between the principles enunciated in *Sinclair* v. *Brougham* [1912] A.C. 398, and the judgment of the Board in *Official Assignee of Madras* v. *T. Krishnaji Bhat*, L.R. 60, I.A. 203. The appellants' appeal would be allowed, the Official Assignee's cross-appeal dismissed.

COUNSEL: *Sir Herbert Cunliffe*, K.C., *Sidney Smith*, and *M. J. Clark*, for the appellants; *R. F. Roxburgh*, K.C., and *J. Bennett*, for the respondent.

SOLICITORS: *Douglas Grant & Dold; Burton, Yeates & Hart.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Southern Canada Power Co. Ltd.

Lord Atkin, Lord Macmillan, Lord Wright, Lord Alness and Lord Maugham. 28th July, 1937.

RAILWAY—ACCIDENT TO TRAIN AND DAMAGE TO RAILWAY CAUSED BY COLLAPSE OF DAM—LIABILITY—QUANTUM OF DAMAGES—WATERCOURSE ACT, 1925 (R.S.Q. 1925, c. 46), s. 12—CANADIAN NATIONAL RAILWAY ACT, 1927 (R.S.C., 1927, c. 172), s. 33.

Appeal and cross-appeal from a decision of the Supreme Court of Canada varying an order of the Exchequer Court of Canada.

In 1928 damage was caused to an embankment, rolling stock and a railway track, property of the Canadian National Railways Company, through a heavy flow of ice and water over a dam belonging to the Southern Canada Power Co. Ltd. Both the Supreme and the Exchequer Courts found that the Power Company were responsible for the damage. The Supreme Court (Cannon, Dysart and Crocket, JJ., Lamont and Davis, JJ., dissenting) reduced the amount awarded under the head of damage relating to rolling stock, etc., on the ground that the damage to the rolling stock was due to the railway company's failure to guard against the damage to the embankment. They overruled an objection by the Power Company that by statute the right of action was vested in the railway company, which alone could sue, and that the action should not have been brought in the Exchequer Court. The Crown now appealed against the reduction of damages, and the company cross-appealed against the overruling of the objection.

LORD MAUGHAM, delivering the judgment of the Board, said that, as to the Power Company's objection, all six judges in Canada had been unanimous. Davis, J., had observed that, on a review of the statutory law concerned, the Crown was the owner of the railway in question, which had become and continued to be the property of His Majesty in right of the Dominion of Canada, that ownership never having been conveyed to the railway company, to which only the operation and management of the railway had been entrusted by statute. While the railway company had a right of action under s. 33 of the Canadian National Railway Act, 1927, and the present action might have been brought in the name of the railway company, yet His Majesty in right of the Dominion had not relinquished his right as owner to sue. In their lordships' opinion, there was little to add to Davis, J.'s, admirably clear statement on this point. The question of the correct quantum of damages raised a question of construction under the Watercourse Act, 1925, originally enacted as 19 & 20 Vict. c. 104, and which had been the subject of many judicial

pronouncements. The Board could not accept Cannon, J.'s, view that the damages contemplated by s. 12 of the statute were those suffered by any riparian owner in respect of his riparian property either above or below the dam, and must be limited to actual damages caused to the owner of a riparian piece of land as a result of the construction and maintenance of the dam. On this point the judgments of Lord Finlay and Lord Dunedin in *Corporation of Greenock* v. *Caledonian Railway* [1917] A.C. 556, and the authorities therein cited, were conclusive to show that at common law, apart from statute, the duty of one who obstructed the natural flow of a river was to prevent damage, and that, if damage resulted to any persons, he would be liable to them irrespective of whether they were riparian owners or not. The Supreme Court held that the Power Company were not liable for the damage to the rolling stock, because the flooding in question was expected, and that railway employees had failed in an obvious duty to safeguard the train. The liability of the Power Company under s. 12 of the Watercourse Act was not qualified in any way. That was not to say that claims for damage in such a case could include damages due to the foolish and irrational acts of the claimants. The latter were expected to behave as reasonable men, and in the event of probable danger to take such steps to avoid injury or damage as reasonable men would take, and to minimise damage if an accident occurred. That obligation would not, however, require them to foresee dangers which ordinary men would not be likely to anticipate. The onus of establishing the case against the Crown on those lines was clearly on the Power Company. It was from this standpoint that their lordships had examined the evidence. The trial judge, and Lamont and Davis, JJ., had held that no blame could be attached to the railway officials for not foreseeing the danger. On a careful review of the whole of the relevant evidence their lordships must come to the conclusion that the respondents had failed to establish any failure of the ordinary duty of managing the railway with reasonable care. The appeal would be allowed, and the cross-appeal dismissed.

COUNSEL: *J. E. Perrault*, K.C., and *J. P. Pratt*, K.C., for the appellants; *A. Décary*, K.C., *Hon. J. L. Ralston*, K.C., and *J. Marier*, K.C., for the respondents.

SOLICITORS: *Charles Russell & Co.; Blake & Redden.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

House of Lords.

Way *v.* Latilla.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright, and Lord Maugham. 28th July, 1937.

CONTRACT—REMUNERATION FOR SERVICES LEFT UNCERTAIN—PRINCIPLES ON WHICH COURT WILL FIX.

Appeal from a decision of the Court of Appeal.

The plaintiff, Way, claimed that he had made a contract with the defendant, Latilla, who was acting either in his own behalf or on behalf of F.P.H. Finance Trust, Limited, in which Latilla held a controlling interest, and that in consideration of the plaintiff's investigating and acquiring gold-mining concessions in West Africa, which were to be financed by Latilla or F.P.H. Finance Trust, Limited, the plaintiff was to receive a reasonable share of the profits derived from the marketing of those concessions through a company which was formed by Latilla for that purpose. The defendants denied the alleged agreement. Charles, J., found that there was a contract. He awarded by way of damages 3 per cent. on £1,000,000, and in addition £60, being payment for certain reports made by the plaintiff—£30,060 in all. The Court of Appeal held that there was no enforceable agreement, and that the question of damages consequently did not arise, and they reduced the judgment to £600 for services rendered.

LORD ATKIN said that the plaintiff originally claimed that there was a completed agreement to give him an interest in the concession, which, by custom, or on a reasonable basis, the court was asked to define. The learned trial judge accepted that view. The Court of Appeal rejected it, and in his (Lord Atkin's) opinion, rightly. There was no concluded contract between the parties as to the amount of the share or interest that the plaintiff was to receive, and it appeared to him (his lordship) impossible for the court to complete the contract for them. If the parties had proceeded on the terms of a written contract with a material clause that the remuneration was to be a percentage of the gross returns but with the figure left blank, the court could not supply the figure. Charles, J., had relied on *Hillas* v. *Arcos*, (38 Com. Cas. 23). But in that case that House had been able to find in the contract to give an option for the purchase of timber in a future year an intention to be bound contractually and all the elements necessary to form a concluded contract. There was no material in the present case on which any court would decide what was the share which the parties must be taken to have agreed. The decision of the Court of Appeal appeared to ignore the real business position. Services of the kind rendered by the plaintiff were, no doubt, usually the subject of an express contract as to remuneration. But in the present case there was no question of fee between the parties from beginning to end. On the contrary, the parties had discussed remuneration on the footing of what might loosely be called a "participation" and nothing else. But if no trade usage assisted the court as to the amount of the commission, the court might take into account the bargainings between the parties not with a view to completing the bargain for them but as evidence of the value which each of them put on the services. That, in fixing a salary basis, the court might pay regard to the previous conversation of the parties was decided in *Scarisbrick* v. *Parkinson* (1869), 20 L.T. 175. The rule applied in fixing the amount of the remuneration necessarily applied to the basis on which the amount was to be fixed. He (his lordship) had therefore no hesitation in saying that the basis of remuneration by fee should in this case, on the evidence of the parties themselves, be rejected, and that the plaintiff was entitled to a sum to be calculated on the basis of some reasonable participation. Charles, J., had made an alternative award of £5,000, and he (Lord Atkin) saw no reason for differing from that. The appeal would be allowed and there would be judgment for the plaintiff for £5,000.

COUNSEL: *F. W. Beney*, for the appellant; *D. N. Pritt*, K.C., *John Morris*, K.C., and *P. Devlin*, for the respondent.

SOLICITORS: *Edwin Coe & Calder Woods; Birkbeck, Julius Edwards & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Paget *v.* Inland Revenue Commissioners.

Finlay, J. 30th July, 1937.

REVENUE—INCOME TAX—FOREIGN BEARER BONDS—PAYMENTS OF INTEREST RESTRICTED—SALE OF COUPONS—PROCEEDS—WHETHER INTEREST RECEIVED BY HOLDER—WHETHER PROCEEDS TAXABLE—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. D., Case IV.

Appeal by case stated from a decision of the Special Commissioners for the purposes of the Income Tax Act.

The taxpayer appealed against assessments to sur-tax made on her for the years 1932–33 and 1933–34. She was the holder of (*a*) 4½ per cent. bearer bonds of the City of Budapest, interest being payable in sterling; and (*b*) 7 per cent. bearer bonds of the Kingdom of Yugoslavia, interest being payable in dollars. In the case of the Budapest bonds, payment of interest in sterling was suspended by decree of the Hungarian Government, and the municipality was required to deposit the equivalent amount in pengos with the Hungarian National

Bank. Payment from the Hungarian National Bank in pengos was only obtainable subject to restrictions as to the use of the proceeds for specified purposes within Hungary. In the case of the Yugoslav bonds payment in dollars was suspended, the holder being given the option either of payment in dinars in Belgrade, subject to restrictions as to use of the dinars, or of 10 per cent. in dollars and the remainder in funding bonds. The taxpayer accepted none of these offers, but sold her coupons through agents. It was contended on her behalf *inter alia* (*a*) that no interest arose to her from any of the bonds in either of the years of assessment; and (*b*) that the proceeds of the sales of coupons received by her were not interest, but merely the price of the expectancy of interest, and were not her income. It was contended for the Crown that the proceeds of the sale of coupons were income, and fell to be included in the assessments under appeal. The Commissioners held (*a*) that the City of Budapest had fulfilled its obligation to pay interest on the bonds, and that the proceeds of the coupons falling at the respective dates of deposit represented interest arising to the taxpayer, which must be included in her return of income; and (*b*) that the Yugoslav Government had not, in the absence of acceptance by the taxpayer of the offer as to payment, fulfilled its obligations; that the sale of the coupons did not amount to an implied acceptance of the offer, and that the fact that the existence of the offer gave the coupons some value in the market did not cause interest to arise. They excluded that item from the assessment. Both parties appealed.

FINLAY, J., said that he did not think that the Commissioners' decision that there was interest in the first case could be right. The deposit of pengos in the Hungarian National Bank could not be regarded as a payment of interest to the taxpayer. That bank was in no sense the taxpayer's agent to receive money on her behalf, and the case differed entirely from *Simpson* v. *Maurice's Executors* (1929), 45 T.L.R. 581, where the German banks concerned were the agents of a testator and duly authorised to receive money on his behalf. As regards the Yugoslavian bonds, he (his lordship) agreed with the commissioners that there was no payment of interest to the taxpayer. An offer was made which, had it been accepted, would or might have resulted in payment of interest to the taxpayer. But she did not accept. In neither case, therefore, was interest paid to the taxpayer. The sums which the taxpayer received were simply the purchase price of coupons, and in no sense, therefore, was there income from foreign securities. In the simple case where a coupon was presented and interest received by the holder, there was undoubtedly income from a foreign possession which might be interest, and which was taxable. That was equally so if a banker or other agent presented the coupon on behalf of the holder; but, if coupons were sold, and interest then received by the purchaser, then there was a sale and purchase, and a receipt of interest by the purchaser. The tax, it seemed, had there to be borne by the purchaser by deduction or by direct assessment on him, and the fact that the purchaser would have to bear tax would be reflected in the purchase price. The fact that he would pay less for the coupon by reason of the fact that he had to pay tax on the interest when he received it did not cause the vendor of the coupon to bear tax. The substance of the thing seemed to be that wherever interest was found it was taxed, but that, if a thing was in truth not interest, but a purchase price of a coupon, then it was not liable to taxation. The interest would, of course, be liable to taxation if and when it was paid. The taxpayer's appeal would be allowed, and that of the Crown dismissed.

COUNSEL: *A. M. Latter*, K.C., and *F. Grant*, for the taxpayer; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the Crown.

SOLICITORS: *Allen & Overy; Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Cross (Inspector of Taxes) *v.* London Provincial Trust Ltd.
Finlay, J. 30th July, 1937.

REVENUE — INCOME TAX — FOREIGN BONDS — ISSUE OF FUNDING BONDS INSTEAD OF PAYMENT OF INTEREST— SALE OF BONDS—WHETHER PROCEEDS ASSESSABLE— INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. D, Case IV.

Appeal by case stated from a decision of the Special Commissioners of Income Tax.

The respondent company were the holders of certain Brazilian bearer bonds. The Brazilian Government, being obliged to suspend payment of interest, made the interest coupons exchangeable for twenty-year funding bonds. The company, having, as they fell due, exchanged its coupons for funding bonds, sold the latter. Assessments having been made on the company in respect of sums which were the proceeds of such sales, the company appealed to the Special Commissioners. It was contended for the company that no payment of any kind had been made by the Brazilian Government, and that no income had arisen to the company within the meaning of Case IV of Sched. D. It was contended for the Crown that the funding bonds issued by the Brazilian Government represented money or money's worth; that they were received in satisfaction of interest due from the said Government, and that they were income arising from securities within the meaning of Case IV of Sched. D. The Special Commissioners, distinguishing *Scottish & Canadian General Investment Co. Ltd.* v. *Easson* [1922] S.C. 242; 8 Tax Cas. 265), held that the transaction could not be regarded as giving rise to income from securities abroad within Case IV.

FINLAY, J., said that as to *Easson's Case* (*supra*) he did not question the general principle laid down by the Lord President (Lord Clyde), 8 Tax Cas., at p. 271. He (Finlay, J.) thought that if, instead of receiving money, a man receives money's worth, that money's worth no doubt fell to be regarded as money and be brought in for purposes of assessment. That was what was decided in *Easson's Case* (*supra*). The other case referred to was *Income Tax Comr.* v. *Maharajadhiraja of Darbhanga*, L.R. 60 I.A. 146. One point considered by Lord Macmillan there had some bearing on the present question, because there the question arose whether certain promissory notes were or were not to be regarded as income. His lordship referred to Lord Macmillan's judgment at p. 161, and said that there was in the present case no doubt that the bonds were things of value, as was shown by the fact that they were things which could be, and in fact had been, sold in the market. The question did not seem to be whether the bonds were things of value, but whether there was anything here which was either interest itself or analogous to interest. A person receiving those bonds, in these circumstances, was not, his lordship thought, receiving interest, or indeed income. Looking at it from the point of view of the recipient, what happened was that Brazil, not being able to give him interest, instead of interest gave him a capital asset. That capital asset, if the obligations under it were duly fulfilled, would, of course, itself result in income, which if and when it was received would be liable to tax. He agreed with the Commissioners that it could not be said that here there was a receipt of interest or any income under Sched. D, Case IV. The whole point was that there was not income, and that the capital asset was substituted for the income. He could not regard that as being a payment of an equivalent of interest, a payment of interest in kind, so as to fall within *Easson's Case* (*supra*). The Commissioners' view was correct and the appeal must be dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the appellant; *A. M. Latter*, K.C. and *J. S. Scrimgeour*, for the respondent company.

SOLICITORS: *Solicitor of Inland Revenue; Linklaters & Paines.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

THE LAW SOCIETY AT EXETER.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

The Law Society held its 53rd provincial meeting at Exeter, from Monday, the 27th, to Thursday, the 30th September. The Society were the guests of the Devon and Exeter Incorporated Law Society, whose president, Mr. H. W. Michelmore, assisted by his two conference secretaries, Mr. F. P. Cottey and Mr. G. H. McMurtrie, left nothing undone which might promote the comfort and convenience of their guests. On Monday evening the Mayor of Exeter, Major A. Anstey, a member of the profession, received the President, Council and Members of The Law Society, and the ladies accompanying them, at the Royal Albert Memorial Museum.

On Tuesday morning, according to custom, the Mayor again welcomed the city's guests, this time at the Barnfield Hall, where the business of the conference was begun. Major Anstey expressed his pleasure at welcoming the Society to the ancient and loyal city of which he had the honour to be mayor. Exeter, he said, felt in centuries, and to it fifty-three years ago was but as yesterday. Nevertheless, it was quite time that The Law Society came to Exeter. It had been to various places in the back o' beyond, and the Council had made a very wise move in selecting the centre of the West this year, when it was so much in the limelight as a result of the celebration of the four-hundredth anniversary of the granting of the charter of shrievalty.

After the Mayor's welcome, the President, Mr. Francis E. J. Smith, delivered his presidential address, which is reported in full at page 789. This year, for the first time, the whole of Tuesday morning after the address was devoted to a discussion of the work of the Council, and the President, therefore, dealt generally at some length with the Council's activities. He declared that he welcomed the discussion, for it might enable some members to appreciate the exacting duties of the Council and the care that body and its committees took in their performance. He then spoke of the county courts and the proposed expansion of their jurisdiction; the education of articled clerks, poor persons' procedure, touting and undercutting, and other current topics.

The meeting then discussed the work of the Council in private until the luncheon interval. There was this year, therefore, only time for five papers, with the discussions on them. Mr. Randle F. W. Holme (London) read a charming and witty paper on income-tax, of which he declared he wholly disapproved in principle. Knowing their difficulties, he had no word of blame for the 1927 committee which took five years to appoint a chairman and ten to produce a report. The task, he said, was so colossal and had been so admirably performed that those ten years were all too short. He commended the committee's Bill as a model of good drafting. He also stated very clearly the effect of the out-of-date rule by which husband and wife are taxed as one, and condemned in strong terms the current policy of penalising the retention of profits for reserves, depreciation and other prudent purposes.

Legal education has been one of the Council's chief concerns since Mr. Herbert Warren's paper at the Hastings meeting in 1935. Mr. H. Gallienne Lemmon (Kings Lynn) dealt particularly with the education of the country solicitor. He examined the best way of teaching legal principles, their practical application and the ability to size up a client's character. He laid particular stress on the need for giving articled clerks some experience of advocacy, and for training them in quick wit and self-confidence. He exhorted The Law Society's school to adhere to practical teaching and not to compete with the universities and schools which profess to teach theoretical jurisprudence. He also suggested that before entering into articles the clerk should have six months' attendance at a law school, and a like period in a London agent's office.

On Wednesday morning, after the annual meeting of the Solicitors' Benevolent Association, Mr. James Whiteside (Exeter) pointed out the need for revision of the law and practice in courts of summary jurisdiction. The mass of law upon which magistrates adjudicate remains scattered untidily over the statute book, he said, because it is nobody's business to collect it. He saw urgent need for another committee to revise the criminal statute law and to overhaul and recast the law of procedure. Among their first group of tasks he suggested that the new committee should tidy up the law governing appeals, gaming, larceny, public mischief and powers of arrest, and should abolish the distinction between misdemeanour and felony.

Mr. Geoffrey Vickers, V.C. (London), enumerated the legal obstacles to industrial integration. The State, he said, directly encourages the modern tendency of industrial concerns to unite into a single co-ordinated whole. The Agricultural Marketing Acts and the Coal Mines Acts indicate that more co-operation and less competition are in accordance with modern public policy. When, however, the companies make tentative agreements for price fixing, joint selling and other measures for mitigating competition, the doubt at once arises whether the general law will not condemn them as contrary to the public policy expressed in decided cases and earlier statutes, particularly the Trade Union Acts. The practitioner has to close a gap which ought not to exist. He urged the legislature to abolish the gap and make legal contracts enforceable at law when the degree of restraint is not unreasonable by the standards of to-day.

Mr. G. B. Ellis (London) contributed a paper on valuation, in which he examined the concept of the hypothetical purchaser and dealt shortly with the valuation of many different kinds of property. He criticised ambiguous authorities and statutory provisions.

The following members of council were present: Mr. F. E. J. Smith (London), President, Mr. A. M. Ingledew (Cardiff), Vice-President, Mr. D. L. Bateson (London), Mr. E. E. Bird (London), Mr. W. A. Coleman (Leamington Spa), Mr. W. C. Crocker (London), Mr. E. Davies (London), Sir H. A. Dowson (Nottingham), Mr. B. H. Drake (London), Mr. D. T. Garrett (London), Mr. W. A. Gillett (London), Mr. H. C. Haldane (London), Sir D. H. Herbert (London), Mr. E. S. Herbert (London), Mr. R. F. W. Holme (London), Mr. L. S. Holmes (Liverpool), Mr. F. H. Jessop (Aberystwyth), Mr. P. R. Longmore (Hertford), Mr. W. E. M. Mainprice (Manchester), Lieut.-Col. S. T. Maynard (Burgess Hill), Mr. A. Morrison (Bedford), Mr. W. E. Mortimer (London), Sir C. H. Morton (Liverpool), Mr. W. R. Mowll (Dover), Mr. W. C. Norton (London), Mr. A. F. I. Pickford (London), Sir R. Poole (London), Mr. G. S. Pott (London), Mr. H. N. Smart (London), Mr. F. Webster (London), Mr. I. D. Yeaman (Cheltenham), and Sir E. R. Cook (London), Secretary.

Entertainments.

On Tuesday afternoon Mr. Michelmore, the President of the host Society, and Mrs. Michelmore welcomed members of The Law Society and the ladies accompanying them at a garden party at The Palace, Exeter. Visitors had an opportunity in the morning to see the old underground passages, St. Katharine's Chapel, the Annivellars' Refectory, the Law Library and the Archdeacon's Gatehouse and Court, all dating from the early middle ages. The dean and canons showed a number of members over the cathedral and its library and belfry. In the afternoon members saw St. Nicholas Priory, Tuckers' Hall and the College Hall. In the evening the Mayoress, Mrs. A. Anstey, held a reception at the Guildhall for the ladies. On Wednesday two excursions left Exeter: one went by Chudleigh, Ashburton and the Dart valley to Dartington Hall, where they were entertained by Dr. Slater and the staff and shown something of this splendid experiment in collective agriculture and education. The other excursion was to Torquay by way of Dawlish, Teignmouth, Shaldon Bridge, Labrador Bay, Maidencombe and Babbacombe. The Mayor and Mayoress of Torquay, Mr. and Mrs. Denys Phillips, welcomed the party to tea at Torre Abbey. In the evening the Devon and Exeter Society held a concert for members and visitors at the Barnfield Hall, organised by Mrs. Maurice A. Mathew.

On Thursday morning there were two more excursions. The first party went to Plymouth as the guests of the

Incorporated Law Society of Plymouth. After lunch some of the party embarked on a steamer and saw Plymouth Sound, and others made a tour round some of the historic places of the town. The party re-assembled for tea as the guests of Sir William Munday, President of the Society. The second excursion took visitors to Exmoor, where the Devon and Exeter Law Society entertained them to lunch at Saunton Sands Hotel and to tea at Barnstaple. In the evening, Masons were welcomed by the Worshipful Master and Brethren of St. John Baptist Lodge, No. 39, which was consecrated in 1732. The President and brothers of the Exeter Catenian Circle No. 75 welcomed visiting brothers to their monthly circle meeting. The Devon and Exeter Law Society entertained members and their ladies with a dance at the Rougemont Hotel.

During their stay in Exeter members were made honorary members of the Devon and Exeter Club, the Exeter and County Club and the Constitutional Club, and were made free of five of the local golf courses.

The President's Address.

Mr. Francis Edward James Smith, the President, delivered the following address :—

The last twelve months have been eventful in the history of our country, and our profession may claim to have played its part in steadying public opinion. I am sure I express your feelings in wishing Their Majesties King George the Sixth and the Queen, as well as Queen Mary and all the Royal Family, the health and wisdom necessary to preside over this Commonwealth of Nations. I am equally confident you will join with me in congratulating Sir Hubert Dowson, our late President, on the honour he received in this Coronation Year. His work for many years as Chairman of the Scale Committee alone would entitle him to be singled out for that distinction, but his presidency has proved that he has gifts of leadership to which I, his successor, can lay no claim. I should like to add a word of congratulation, too, to Dr. Burgin, another member of the Council, whose success as Parliamentary Secretary to the Board of Trade is now recognised by a Privy Councillorship as well as by a seat in the Cabinet as Minister of Transport. The Council will always remember with gratitude the bi-lingual facilities which enabled him to extend a hearty welcome to our French confrères last year. Lord Wright's tenure of the office of Master of the Rolls has been all too short. His resumption of the office of a Lord of Appeal has deprived us of a judicial head to whom the Council never appealed without success for assistance and direction. Fortunately in his successor, Sir Wilfrid Greene, we can look forward confidently to a handling of our difficulties as sympathetic as that of his predecessor.

At the close of my introductory remarks there will be inaugurated for the first time at these meetings a discussion on the work of the Council and The Law Society. Personally, I welcome such a discussion. It will, I hope, enable some to appreciate, if they do not already do so, the exacting duties of the members of the Council and the care taken in their performance. It will also, I hope, arouse sufficient interest to induce those members of the profession who still stand outside The Law Society to join it and so enhance its status and add importance to its criticisms and recommendations. But as the Council are committed to affording facilities for two hours' discussion by members of the work of the Council, it follows that your President must limit his introductory remarks so as to compress them within one half hour: otherwise the discussion must be curtailed or the luncheon hour postponed.

The activities of the Council are, of course, multifarious. There are, besides various special committees, nine standing committees, five of which hold meetings which yearly run into double figures, in addition to the Statutory Committee entrusted with statutory disciplinary powers. It is inevitable that the Council should rely largely on the reports of their committees when they come up for consideration. Many of those reports are the result of long consideration and often of more than one meeting, and some degree of unanimity is generally possible in their recommendations, but in all cases the reports come up for consideration and adoption by the Council. Perhaps the Professional Purposes Committee, the Poor Persons Committee and the Scale Committee are those whose duties are the most multifarious, but the Legal Education and Examination Committees, of which I have more to say later on, are in frequent session, and the Parliamentary Committee exercises a vigilant watch on any measures proposed to Parliament touching the administration of justice and the status and privileges of the Profession.

A Royal Commission has of recent years deliberated on a retiring age for judges of the Supreme Court. No such discussion has, at least openly, been voiced as to the age limit at which your President should forego the honour of addressing you. And yet there are fairly obvious limits. If I am asked to make a suggestion I would call attention to the revolution which our civilisation has undergone in the last fifty years. Within that period we have experienced the direct and indirect effects of the World War, the discovery of the internal combustion engine, the mastery of the air, wireless telegraphy, and all its consequences, and X-ray photography. Now, though at first sight these may be said to have little relation to the duties and tasks which devolve on your President, as a matter of fact every one of them has to be taken into account by our profession, and it seems obvious that after a long and active professional life it is not a simple task for an individual at my age to face with resolution the problems awaiting solution. Bearing these facts in mind, I suggest a limit of fifty years of professional life might be approximately the term after which no one should be called to occupy my place to-day.

We constitute, indeed, a social organisation, or, to use the words of Burke, "a partnership not only between those who are living, but between those who are dead and those who are to be born, the dead bequeathing their experience and the living their pressing needs, while even those yet to be born have certain rights to be regarded though these rights are not yet *in esse*." But the rule which the Council of The Law Society have always laid down for their guidance is that we exist as a professional body of some 16,000 solicitors scattered over England and Wales, even though only, alas, some 11,000 are members of The Law Society, which is but a voluntary association under the statutory ægis of a Charter. Such a body of widely scattered *intelligentsia*, were it to enter into political life, if it submitted to central direction, might well have a deciding influence on many current questions. The Council have, however, always felt that their activities should be confined to questions affecting the Profession. To take a simple instance—the Finance Bill of 1936 contained words designed to enable the General and Special Commissioners of Income Tax to serve a notice requiring "*any person*" to furnish them with such particulars as they might think necessary for the purpose of determining questions arising under settlements of income for children, and imposed a penalty of £50 a day for default in compliance with such a notice. The Council, feeling that the privilege attaching to a solicitor's communications with his client was threatened, at once took steps to confine the operation of the clause to *any party* to such a settlement. We did not think it our duty to criticise or attempt to alter the principle underlying the clause so altered.

It is true that successive Governments of the day have frequently appealed, and never I believe without response, to the Council for observations on projected legislation; and through our own experience, and the widely spread experience of the Provincial Law Societies, we are in a position to marshal facts and to co-ordinate criticism so as to be at the service of any Government.

County Court Jurisdiction.

The Report of the Royal Commission on the Despatch of Business at Common Law, issued early in 1936, was one of the outstanding legal events of last year. The Commission took a strictly limited conception of the terms of their reference. "Despatch" they considered as meaning "the expedition with which business proceeds." It is this which makes the memorandum appended to the Report by Mr. Clement Davies, K.C. (who signed the Report with substantial reservations), a more informative document, as I see it, than the Report itself. Expedition is but an element in the despatch of business. The Commission, however, confined their functions to examining the operations of the county courts "only for the purpose of forming an opinion whether the business of the King's Bench Division could be lightened by devolution of cases to the county courts without injury to the present work of those courts." And yet the Commission seem to glance at a wider conception of the terms of their reference when in their Report they say that: "The greatest relief to the common law courts during the past hundred years has arisen through the creation and gradual growth of the county courts." The original jurisdiction of the county courts, as established by the Act of 1846, extended broadly speaking to £20; it is now £100. Taking the twenty-one years from 1847 to 1869, the average annual number of proceedings commenced in the county courts was 672,000; in 1904 it had increased to 1,339,000; it fell during the war; in 1935 it was 1,229,401, in which year over 23,000 cases were heard before the judge alone, 367 before a judge and jury, and over 8,000 before a registrar. The magnitude of these figures will be appreciated when compared with the figure of cases commenced in

1935 in the High Court, which was only 94,001. Within the last few months Parliament, too, has recognised the importance of securing county court judges of the calibre required by increasing their remuneration to £2,000 per annum. It must be remembered, too, that the county courts are exclusively responsible for the administration of the Rent Restrictions Acts and the Workmen's Compensation Acts, both immensely complicated and important measures. The inference that the opposition to the extension of the county court jurisdiction beyond £100, or so as to include libel, slander, seduction or breach of promise actions, must be based on ground other than competency to cope with such an extension is irresistible. So experienced a county court judge as Sir Mordaunt Snagge indeed expresses the view that to increase jurisdiction up to £200 would have no effect whatever in squeezing out the small man. It is remarkable, too, that the Trades Union Congress General Council advocate raising the limit to £500, and say there would not appear to be any justification whatever in these modern days for the present limits of jurisdiction. The Commission, indeed, seem wistfully to glance back on their own recommendation to confine the usefulness of the county courts to the present limits, when they observe that the time of the High Court judges of 1935 is to a large extent engaged in dealing with the effects of the internal combustion engine and with the effects of a mass of social legislation. Yet the admitted relief which the extension of the money limits of jurisdiction would afford to the body of suitors is withheld on grounds which can hardly commend themselves to the masses of poor people who are more concerned to get their disputes settled in a convenient form. The class of cases where the county court jurisdiction is absolutely barred remains and goes a long way towards making a mockery of the principle of the British Constitution that all men stand equal before the law.

Or again, I ask, can the effect of s. 86 of the County Courts Act, 1934, and the Rules made in 1936, any longer be defended in the interests of the public? Two solicitors engaged in cases before the county court at, say, Haywards Heath meet on the platform at Brighton. The first says: "I am engaged in the case next before yours to-day, and have just received terms of settlement which I can accept. Will you appear in my stead and get judgment entered accordingly?" Legislation has made this simple procedure impossible unless forty-eight hours' notice of change of solicitor has been given to the registrar and every party to the case. Only a barrister can be so employed. Is that rule designed to facilitate proceedings and expedite business or to protect vested interests?

Before leaving this subject I will venture to quote to you the words which Dr. Fisher, one of our latest historians, puts into the mouth of the First Consul of the French Republic: "(Legal) Procedure seems no doubt technical to laymen and the procedure of (French) Courts may be capable of simplification, but it is not, as you imagine, the predatory apparatus of a bandit profession, but a series of rules the total effect of which is to equalise the chances of litigants and to minimise the room for caprice." I will only add that competent authorities regard the Code Napoléon as the most lasting of the great Napoleon's creations.

Education.

One of the main activities of the Council is concerned, as it should be, with the education of new entrants to our ranks. There is complete unanimity as to the objects to be attained, viz., that those entering the profession should not only possess a good sound general education and should learn by actual practical experience to guide aright clients who seek their advice, but should also conduct themselves so as to be recognised as gentlemen. On the other hand the best method of attaining these objects is the subject of very different opinions.

History is sometimes compared to a vista of swinging lamps, each oscillation of which brings nearer the conflicting interests which have to be balanced. Nothing is more true of educational problems, and not least of those of legal education. Dr. Radcliffe, our Principal, in the Year Book of Education for 1937 has presented a sketch of the history of legal education in England on which I am venturing to draw. To go no further back than 100 years ago, there was then no kind of education for candidates for a call to the Bar, and sporadic attempts by the various Inns of Court to establish lectures had died of inanition after two or three years for lack of attendance. The earliest attempt, in 1851, to form a council of legal education contained the "singularly inept provision" that *either* attendance at lectures *or* the passing of an examination should qualify a candidate to be called to the Bar. Even in 1872 the then Lord Coleridge, when Attorney-General, assured the House of Commons that "to teach English Law by lectures was a pure delusion. It must be learnt by practice." Fortunately wiser counsels prevailed and in 1877 The Law Society acquired the right, which it had previously only enjoyed by favour, to control its own Preliminary, Intermediate and Final Examinations. Since then, I am proud to say, The Law Society has never looked back in the matter of the education of solicitors, and when the Court of Appeal, in 1905, decided that the proceeds of the sale of Clifford's Inn and New Inn (approximating £150,000) were impressed with a charitable trust for legal education, the claims of The Law Society to an equal share of that fund could not be resisted; and though the scheme for the establishment of a combined school of law, which was strongly pressed by the late Lord Finlay, was defeated, yet, under an interim order which is operative to this day, half the income of that fund is paid to The Law Society for expenditure by them on legal education. Two more landmarks remain in the history of legal education so far as it affects us. In 1922 a year's attendance at an approved school of law was rendered compulsory for all articled clerks, and The Law Society undertook to make substantial annual grants, now amounting to £13,000 a year, to boards of legal studies set up by the Local Law Societies working in close touch with the local law schools, which in their turn undertook to provide instruction for articled clerks preparing for the Society's examinations. The necessary funds were provided by increasing the fee from 5s. to 20s. payable by solicitors on taking out their annual practising certificates. The Solicitors Acts of 1932 and 1936 must now be read together, and form a landmark by themselves. No solicitor who has not at some time been in continuous practice as a solicitor for more than five years may take an articled pupil, and six weeks before entering into articles a pupil has to give notice to The Law Society and give evidence of its fitness and suitability for entering the profession. That the Council take their duties seriously is evidenced by the regulations they have made requiring two certificates of fitness from responsible persons who are not near relations and have known the applicant for at least two years. Provisions are also made for shortening the period of articles from five to four and a half years for pupils who have passed one examination in approved colleges or universities, and to four years for those who have passed two such examinations, or who have, before entering into articles, attended and passed an examination in a course of legal instruction. Further, not later than fifteen months after entering into his articles, a pupil must attend a course of legal education at a law school, and give satisfactory evidence of his diligence, and such attendance must amount to at least seventy-two hours spread over at least three terms, and in periods of not less than two hours a week. I have enumerated somewhat in detail these provisions, as they are, I submit, real attempts to improve the status and professional equipment of the 900 or more candidates who come up each year for admission on the Rolls, and cannot fail in time to produce their mark on the profession. I have not referred in detail to the important changes in the syllabus for the examinations which we have made in the light of the last fifteen years' intensive experience in the law schools, or to the careful consideration which we are giving to the character of the examinations which are to be set on the new syllabus. I am confident that they will result in still better collaboration between the Law Faculties which teach on the one hand and the Society which examines on the other. The problem, however, still remains; how to reconcile the demands of the office where increasingly difficult questions are dealt with arising out of hire-purchase agreements, motor accidents, income-tax, estate duty, rent restriction, workmen's compensation, town planning, etc.—for the most part unknown to the law much less than a century ago—and the demands of the book work necessary to pass the tests set by the Examination Committee. The difficulty is, of course, greatly enhanced by articled clerks being widely scattered over the length and breadth of the country, unlike the medical students who are concentrated in a few great university centres.

I find myself wholly in agreement with the conclusion that the legal profession will in time follow the medical and accept the intermediate test of the universities as sufficient evidence of proficiency in the elements of law, and that it will become increasingly common for the prospective articled clerk to master these elements in a whole-time course at the law school before entering into articles. By so doing, a young solicitor will get much better taught, enter the office far better qualified to profit by the training there, and be able to devote his whole time during the early years of his articles to the office work entirely free from attendance at a law school and preparation for the Intermediate. When this change takes place, another swing of the pendulum in the vista of educational problems will have found equipoise, and it will be for that generation to see that no disturbance of self interest shall prevent that equipoise being reached.

Meanwhile, the Council recognise that it would be unwise at present to press for the institution of an academic year before entry into articles, until it is proved by experience how far a pupil of reasonable application and ability can, by taking the compulsory year under the Solicitors Act at the beginning of articles, and the new Intermediate Examination any time after the expiration of the first year, secure an uninterrupted period for practical work in the office before he need prepare for his Final.

Poor Persons Procedure.

No remarks of mine at this meeting would be complete if I ignored the really excellent public work done by the Profession without reward of any kind for poor persons. It is eleven years ago since the Council took over from the Government a task which had proved beyond them. I was on the Council at the time in 1924, when we shouldered a work the magnitude of which I do not think any of us then anticipated. Let me at once say that we reckoned on, and were justified in reckoning on, the loyal support of the provincial Law Societies. Without that help it would have been impossible to cope with the work, and the Council are profoundly grateful for the assistance so willingly given. But no one can study the report of the Committees for last year without being struck with the high proportion of matrimonial cases which came before them, and wondering what will be the effect, now that the causes for divorce are extended to include desertion, and divorce proceedings can be founded on the facts upon which an order under the Summary Jurisdiction Acts has been made and that order may be accepted as sufficient proof of the ground on which it was granted, provided there has been no resumption of cohabitation. It is probable that the Poor Persons Committees will be inundated with applications for certificates for some time; but to those who say that the whole machinery will break down I venture to point out that The Law Society have successfully set up a scheme which has in the past dealt so efficiently with applications that the courts have recognised the value of the work done and the discretion which has been exercised in granting or refusing applications. It is certainly not true, as has been alleged, that Poor Persons cases do not get the careful consideration given to paid cases. The public may rely on the Profession acting with the same care and discretion in the future, however much their work may be increased. The report of a Home Office Committee issued in 1934 showed that magisterial orders had risen to as high a total as 11,000 in a year. We need not suppose that all those are entitled to take divorce proceedings, but even a small percentage of them will materially increase the work of the Committees. Experience proves that a great number of would-be petitioners for divorce have but a vague idea of what is required to enable proceedings to be launched or handled with success, and that a guiding hand is necessary to direct the average poor person to his or her appropriate remedy. It is probable that many of those entitled to relief now that the causes of divorce are extended will be applicants for a Poor Person's certificate under the present Rules. Exactly what the effect of this will be it is impossible to say. Certainly the work of the Committees, and the work of the conducting solicitors under the Poor Persons Rules, as well as the work of the High Court judges, will be increased. Indeed, as the Council's report this year points out, the grounds of divorce having been extended, it is more desirable than ever that the district registries should be given jurisdiction to deal with paid divorce cases as they now deal with Poor Persons' cases. If this were done, such an extension would be of material benefit in solving the vexed question of border-line cases and would automatically reduce the number of persons applying for divorce under the Poor Persons' procedure. The apprehensions expressed by the Committees do not seem unfounded. It may be that they will be so inundated with applications that the Poor Persons organisation will have to be reconsidered, but I do not think we are being helped by those who are assuming this beforehand. Meanwhile the Council, true to the rules they have laid down for their own guidance, have not felt entitled, nor do they desire to comment on the principles of any Act changing the marriage law. They confine themselves to pointing out the possible effect on the Poor Persons organisation.

Trustee Corporations and Banks acting as Trustees.

We have with us a problem which has been for several months under the consideration of a special committee of the Council, namely, the intrusion of banks and other corporations on the legitimate sphere of solicitors in the administration of trust estates and executorships. However much we may individually dislike such interference, it has come to stay, and all the Council can do is to canalise its effects and ensure that the intruders do not make unfair use of their opportunities. The formation, as has been suggested, of any purely legal trust corporation presents difficulties financial and practical that are insuperable. The Council, however, where their attention has been drawn to circulars or other means calculated to undermine the position of a solicitor with his client in such matters, have taken the case up and secured the withdrawal of such sinister influence.

Touting and Undercutting.

Another problem which the Council hope their action has mitigated is that of touting and undercutting, and the sharing of profit charges with any person who is not a solicitor or other duly qualified legal agent. The Rules made in 1936 have only been in force since the 1st of October last and it is too soon to appraise their full effect, but the number and variety of cases which have been brought up for the consideration of the Professional Purposes Committee are an indication of a widespread mischief which it is hoped will be mitigated, if not wholly extinguished.

Solicitor's Undertakings.

One word dealing with a professional matter of great difficulty which is of everyday occurrence. Hardly any completion of a sale of real estate takes place without an exchange of undertakings by solicitors to pay outgoings when ascertained. Do such undertakings expressed to be given "on behalf of my client" or "on behalf of the vendor" limit the scope of the solicitor's undertaking so that he is only liable if his client implements his undertaking? The Council have given as their considered opinion that, where such an undertaking is given for the purpose of completion of a purchase, further or different words are necessary to make it clear that the solicitor does not intend to accept personal liability, and that such an undertaking so given should be implemented by the personal liability of the solicitor, as a matter of professional etiquette because, unless effect is given to such an undertaking by a solicitor no reliance can be placed upon it and it becomes valueless. This should elucidate many questions.

Territorial Army Recruitment.

Before I sit down there are one or two domestic matters I should like to refer to. My predecessor at Nottingham last year expressed a hope that we as a body should respond to the efforts now being made to find recruits for the Territorial Army and Air Force and at the Special General Meeting of the Society in January last he asked all solicitors to grant facilities to their articled clerks and members of their staff to join the Territorial Army and encourage them to do so. His remarks found an echo in the appeal addressed to the President by General Sir Walter Kirke, the Director-General of the Territorial Army. That appeal is set out at length in the May number of our "Gazette," and I venture to endorse it to-day. The Post Office Telephone Directory will give you the address of the nearest Territorial Association and a letter addressed there to the Commanding Officer will receive prompt attention.

The Solicitors' Clerks' Pension Fund.

Lastly, I again plead for the Solicitors' Clerks' Pension Fund, as did my predecessor at Nottingham last year. The fund is managed by a board composed of employers and employed. It already has accumulated funds of £70,000, but it should attract more members than it does. Its appeal should be irresistible to those of us who look to have to provide in course of time for clerks whose long services have built up the position they now enjoy. Is it too much to suggest that, here and now, those present and those who read these words will resolve to stipulate that new entrants on their staffs shall join the Fund?

I have but touched on some of the problems which engage the constant attention of the Council, but if my fugitive remarks lead any of my hearers to appreciate their labours and induce those of our Profession who do not already belong to join The Law Society, I shall be well rewarded.

The President of the Liverpool Law Society, Mr. A. E. Frankland, proposed a vote of thanks to the President for his address, which was seconded by Colonel C. F. Morgan, the President of the Manchester Law Society.

The Society then discussed the work of the Council *in camera*.

Mr. Randle F. W. Holme, B.A. Oxon (London) read the following paper:—

Income Tax.

When I was born, Queen Victoria had about thirty-six years still to reign, only a year had elapsed since Speke had forestalled Burton in discovering the sources of the Nile, the slaves of Brazil had still twenty-three years to wait for

emancipation (I saw them when I was twenty-one—they did not seem in the least to mind being slaves, any more than a horse minds being a horse, or a dog a dog), public houses were open all day from 5.30 in the morning until late at night (and they didn't seem to mind either), Lord Palmerston was Prime Minister, and income tax was 7d. in the £. People *did* mind that. I have heard since that this evoked grave protests as being an outrageous imposition in time of peace. It is true that England was then at peace; eight years had elapsed since the end of the Crimean War, and on the day I was born exactly fifty years and one month were to elapse before England was again involved in a European war. War is a fruitful soil for the growth of income tax. Born in the Napoleonic Wars, in our war it flourished like a green bay tree, growing from 1s. 2d. in the £ in 1914 to 6s. in the £ in 1916, from which flood-mark the tide has never very far receded. But in 1870, owing no doubt to the protests I have mentioned, it was as low as 2d. in the £—a very reasonable and proper rate in my opinion—assuming that income tax, of which I wholly disapprove in principle, is to be tolerated at all.

The year 1874 was all but a milestone—indeed, a tombstone—in the history of the income tax. In that year Mr. Gladstone dissolved the Liberal Government, of which he was the head, and at the age of sixty-five, appealed to the country to return him to power, promising, if that was done, to diminish local taxation and repeal the income tax. The criticism of his opponent, Mr. Disraeli, was that these were measures that the Conservative party had always favoured, and the Prime Minister and his friends always opposed. The Muse of History may wonder why, if both political parties were agreed, the income tax was not at once repealed. Anyhow, the income tax is still with us. I have heard it said that Mr. Gladstone's influence may still be seen in the assessment for income tax of a husband and wife as "one flesh"—a fact which gives rise to anomalies to which I call attention later. I do not know whether it is Mr. Gladstone to whom we are also indebted for the definition of "married woman" which is now to be found in s. 237 of the Income Tax Act, 1918, which reads as follows: "*Incapacitated person* means any infant, married woman, lunatic, idiot or insane person."

To come to more recent times, in 1909, in the Budget which became law in 1910, Mr. Lloyd George introduced super-tax at the rate of 6d. in the £ on incomes of over £2,000. Again, a reasonable and proper rate. But this was the thin end of the wedge, and, if I were an American gangster, I should say: "Boy, some wedge!" I am told by arithmeticians that, when a middle-aged man in receipt of an unearned income exceeding £50,000 has paid his income tax and sur-tax and the premiums necessary to provide for the estate duty payable at his death, he will have no income left at all. It is a dreadful thought that there may be millionaires among us unable to buy the bare necessities of life, and I have sometimes thought that this must account for the fact that one so often sees apparently well-educated and respectable gentlemen selling matches in the street.

The war not only caused the increase of the rate of income tax from 1s. 2d. to 6s. in the £, but it also caused the invention of Excess Profits Duty (with its posthumous, illegitimate, still-born offspring, the first N.D.C.), Munitions Exchequer Payments and Corporation Profits Tax (with its posthumous offspring the new N.D.C.), all of which, as well as super-tax, were based on income tax rules with modifications, so that these rules suddenly became of the greatest importance.

Before the War, the question of the amount of an assessment for income tax was of comparatively small importance, when only a few pence, or even a shilling or two, in the £ was all that was involved. It was worth but few people's while then to enter into expensive litigation, but when the rate began to approach its present figure, and the rate of super-tax grew and grew, and particularly when Excess Profits Duty took as much as 80 per cent. of a tax-payer's earnings, then litigation was well justified, with the result that, since the War, Inland Revenue cases in the courts have been one of the most important branches of litigation. I have before me, as I make my notes for this paper, the Official Reports of Tax Cases. They begin in the year 1875, and I find that from that year until 1914 the Reports average ninety-six pages per annum, whereas, from 1914 to 1936 they average 518 pages per annum.

That there was but little litigation in those early days is fortunate, because, before the passing of the Income Tax Act, 1918, which was a consolidation Act, the Income Tax practitioner had to draw his law from no less than fifty-six Statutes, going back to the Income Tax Act, 1842. That Act, and the subsequent Act of 1853, which was almost as important, were framed in the most archaic language.

A few years before the War, Lord Wrenbury, sitting in the House of Lords, called attention to the grave necessity of a consolidation of the Income Tax Acts. Being then younger and more energetic than I am now, I unwisely took upon myself the task, and produced a draft Bill which I sent to Lord Wrenbury, through whom it reached the Inland Revenue. The effect of this was to galvanise the Inland Revenue into unwonted activity, as a result of which they drafted the Bill which now forms the Income Tax Act, 1918. This was one of the major mistakes of my life, as it has resulted in my being given the opprobrious epithet of "income tax expert," the culmination being the request—nay, the command—of our President to read this paper to you to-day.

Although the Act of 1918 was a complete consolidation of the previous statutes, it very soon became out of date, seeing that in almost every year since there has been an alteration in the law, sometimes very extensive, effected by the Finance Act of the year, and a new consolidation is badly called for. Fortunately, as you know, a Committee was set up to consider, not only the consolidation, but also the codification, of income tax law. This Committee was set up in 1927 and produced its Report in 1936. In 1932, Lord Macmillan was appointed chairman, an occasion which called forth some verses which appeared in the press. I do not know the author of them, and I apologise to him for reading them to you. But before I do so, I desire to say that, so far as they contained criticism of the time occupied by the Committee in making their report, that criticism is undeserved, as anyone who appreciates the magnitude of their task will recognise.

"Five years ago—in 1927—
Our rulers in their wisdom then decreed
That some degree of clarity should leaven
The Code that serves to shear the bulldog breed;
A task whose speed does not, you must allow,
Resemble that of express train or airman—
Still, after five years' interval, they now
Have got as far as to appoint a chairman.

How slow proceeds the task of explanation,
How leisurely and with what lack of haste!
How most unlike the rash precipitation
With which the actual cash required is chased!
Oh! What a boon for sorely burdened backs
If they would less impatiently obtain it—
Ah, me! I wish they could collect their tax
As slowly as they labour to explain it!

Come here, my son—as heir to all the ages,
It may be yours, at some far-distant day,
To see the net result at which these sages
Have plugged so long and lucidly away,
Your parent, child, still flounders in their traps,
And merely finds the dough when they demand it;
'Tis his to foot the bill, but yours, perhaps,
When you're an old, old man, to understand it."

I repeat that, after reading the Income Tax Bill and the Report which the Committee produced, no one would deny that any criticism in these verses founded on delay is shown to be undeserved, but the verses illustrate the magnitude of the Committee's task. That task was so colossal, and has been so admirably performed, that the nine or ten years occupied were all too short, and it is really a wonder how the learned gentlemen who composed that Committee (most, if not all, of whom had other duties to attend to) succeeded in getting through this great work in so short a time. Yet it is true that, as those ten years rolled by, we, who were in ignorance of the strides which the Committee were making, sometimes wondered whether their task would be completed before, in some future totalitarian or proletarian state, income tax would be abolished. The fear was groundless. Income tax is still with us.

The Bill which the Committee have annexed to their Report is a model of good drafting, and it will be an immense advantage to income tax practitioners, and I suppose also to the public, if the Bill should become law at an early date. Its excellence is shown by the fact that, although it has been submitted to scrutiny by numerous persons and bodies, including The Law Society, this has led to only a few suggestions, few of which are really of vital importance. Sometimes it is said that, if the law is made too easy by codification, there may result a lessened demand for professional advisers. There is no danger of that in this case. If any layman can master the new Bill when it becomes an Act, he will thoroughly deserve any saving he may achieve in the payment of professional fees.

There is, indeed, one alteration in wording which the Committee have adopted in their Bill to which the Council do object. Finality of assessments must surely be agreed to be desirable and anything which tends to the contrary direction is objectionable. Under the existing law, s. 125

of the Act of 1918, the Inland Revenue is entitled to make an additional assessment within six years if the inspector discovers something to justify it. The word "discovers" seems to indicate that something new must have turned up and not to justify an additional assessment merely because the inspector has changed his mind. It is true that in most cases any attempt to resist an assessment on the ground that there has been no such discovery has failed, but there have been exceptions. In the Bill the word "discovers" is altered to "comes to the conclusion." This seems to open the floodgates to fresh assessments whenever an inspector of taxes changes his mind upon some point already before him, or a new inspector is appointed who differs from his predecessor. The alteration which the Council have urged should be adopted is that, if the words "comes to the conclusion" are to be substituted for the word "discovers," then the substance of following words, which are taken from another clause, should be added: "unless, since the adjudication, new facts affecting the claim have been discovered."

The existing law, as contained in the Act of 1918 and subsequent amending statutes, divides taxable income, as you all know, into five classes, called Schedules A, B, C, D and E. In fact, these divisions are by no means exhaustive, so much so that the new Bill, dividing up all classes of income with logical precision, finds that there are not less than fifteen classes, and "Schedules A to D" have become "Classes A to O." It is dreadful to think that there may exist people who possess income falling under every one of these fifteen classes, each of which is liable to be taxed in its own specially ingenious fashion.

You see the draftsman has abandoned the old word "Schedule" for the word "Class." Well, that has the advantage of being three letters less, which is, no doubt, a gain in these days of speed and urgency. And yet many of us will part with the old schedules with a feeling of regret. It is true I have but a nodding acquaintance with Schedules B, C and E, but I regard Schedules A and D as old, intimate and well-tried friends.

It is said that, when Beethoven was dying, there passed before his dimming eyes representations of his nine symphonies in the form of female figures rather scantily clad. I have often wondered whether, when the draftsman of the early Income Tax Act was dying, there may not have passed before his eyes similar representations of his creations, Schedule A, Schedule B, Schedule C, Schedule D and Schedule E.

Now I should like to call attention to one or two matters in which the present income tax law appears to me to be evidence of bad statesmanship. Of course, income tax itself is the negation of statesmanship. It is a tax on thrift. It punishes the industrious apprentice and lets his idle brother go free. It is based on the principle dear to oriental despots: find a man of property and relieve him of it. But, like the prisoner of Chillon, we have grown accustomed to our chains, and life without income tax can hardly be imagined. All we ask or hope for is that our gaoler will sometimes ease our chains a little bit, or, at any rate, will not twist them any tighter. It is not only burdensome but illogical: it taxes the income of the widow and the orphan, but not the ill-gotten gains of the burglar or the prostitute. And the treatment of married couples certainly seems unstatesmanlike. It is true that a taxing statute is concerned primarily with taxation, but still it comes from Parliament which is supposed to be an assembly of statesmen who take a long view.

Under the present law, a married woman living with her husband is not liable for income tax. The restrictions on the rights and liabilities of married women which used to be so wide have been largely abandoned. They have their votes, they have encroached upon our professions; they attend most functions, except city and legal banquets, and they are subject to bankruptcy, but they still remain not liable for income tax or sur-tax. I have already referred to the complimentary definition accorded to them in the Income Tax Act. Their income for this purpose forms part of the husband's income and it is he alone who is liable. Now, although a married man's allowance is greater than that of a bachelor or spinster, it is not double and, consequently, a married couple get a smaller allowance than a couple who are living without going through the formality of adopting the marriage tie. That seems to me to be bad statesmanship and a direct incentive to immorality.

Attention was drawn to this by a letter from Mr. Reginald Grenfell to *The Times*, which appeared on the 18th June, 1937, and from which I venture to read the following extract:—

> "It is continually argued that the increasing number of divorces and the short duration of many marriages is proof of a weakening sense of morality. It may, therefore, be of interest to point out precisely how much the people of this country do pay to uphold their moral standards.
>
> "The initial charge payable to the Government is small—a mere 7s. 6d. for the marriage licence. It is only after the ceremony that the Inland Revenue really steps in and puts up the price. When assessing individuals for income tax, a single person is allowed to receive £100 a year free and the next £135 of income is chargeable at one-third of the standard rate. Married couples, however, are only allowed £180 free and the same reduction on the next £135. It will, therefore, be seen that two separate people with incomes of £235 each will pay between them £22 10s. of tax. Should they, however, marry each other, the tax will be increased to £50—rather more than double.
>
> "Whether or not the couple could obtain any financial benefit from having children which would not accrue to them in an unmarried state is open to doubt. I have heard of the bachelor who claimed allowance for a child and who, on receiving a note from the Inland Revenue suggesting that this was a typist's error, merely answered 'yes'; but the story did not relate whether the allowance was subsequently granted. In any case, it would be, if the child were adopted. The fact is that marriage, as opposed to a non-moral life, would cost these two people £27 10s. a year.
>
> "The richer a couple are the heavier does the cost of morality become. A married man with an income of £40,000 pays tax of £22,000. If, instead of marrying the lady, he gave her an annuity of £20,000 and lived with her as his wife, he would save £2,600 a year, one-seventh of his net income . . .
>
> "At the end of 25 years this couple will celebrate their silver wedding. Allowing for compound interest at 2 per cent. per annum, free of tax, they will be £83,000 poorer than they would have been had they led an unmarried life. A golden wedding is rather more costly, working out for these two at slightly over £219,000.
>
> "Thanks to the Inland Revenue, it is a considerable luxury to keep a wife."

It is true that there is a provision, viz., s. 25 of the Finance Act, 1920, which, at first sight, seems to provide for separate taxation of man and wife, "as if they were not married." But, when one reads to the end of the section, one finds that, with grim humour, the Act provides that, although husband and wife may be assessed separately, they are never to pay less than they would pay if they were assessed jointly. The provision, therefore, is merely one of form and machinery and not of taxability. There is a similar provision as regards sur-tax in the Finance Act, 1927, s. 42.

In one respect married women no doubt, sometimes suffer from this provision. If their income is all paid to them after deduction of tax, then, in fact, they do pay income tax themselves. But it is the husband who gets the allowance. In such a case, he ought, no doubt, in equity, to give his wife her fair share of the allowance. But he is not bound by law to do so, and I have an idea that there must be many a husband who, by accident or design, omits to call his wife's attention to this fact.

Another instance of what I consider bad statesmanship is to be found in s. 21 of the Finance Act, 1922, as amended by the Finance Acts, 1927, 1936 and 1937. These are the sections which impose a liability for sur-tax on the undistributed profits of certain companies. Of course, it is right that rich men should not escape sur-tax by any such device as that of making over their property to a limited company. But, in directing their shafts against this practice, the Legislature, as so often happens, has gone too far, and while aiming at the crow has hit a pigeon. Attention was called to this in the presidential address of Mr. Foster, at our provincial meeting in 1929. In that address, which I often think attracted far less attention than it deserved, the then President called attention to numerous anomalies in our laws which cried out for remedy, and amongst them he instanced the matter I have just referred to in the following words, which I venture to quote here:—

> "The effect of those sections is that there is restriction, or at least severe discouragement, on certain companies storing up their resources, and an invitation to them, on the contrary, to expend them. The industries of this country have been built up in the past by traders husbanding their resources, and not spending all they earn. It is hard to realise that our legislators have been willing to impose conditions which have the effect of preventing or discouraging this. The provisions were introduced in order to prevent the use of company law to avoid payment o super-tax, particularly in cases where a rich man made over his investments to a company in which he held or controlled all the shares. No one could object to an attempt to prevent this, but the sections have been

so drawn that the effect is not only to prevent the avoidance of sur-tax in the case of the millionaire's holding company (which, indeed, they often fail to do), but to discourage trading companies from husbanding their resources, and to impel them to distribute the maximum amount of dividend compatible with the minimum of safety. Taxation under these sections may be easy, as the profits were obvious; but so were the windows when the window tax—that classical instance of unenlightened legislation—was imposed.

"If, in the opinion of the appointed officials, the proposed reserve made by a trader is too large, one is treated to the spectacle, which would be ludicrous were it not tragic, of the trader pleading before a tribunal (which cannot possibly know his business as well as he does himself) for leave to be allowed to save his earnings, and not to be compelled to spend them. The penalty of making a mistake as to what view the tribunals may take involves a pecuniary penalty of sur-tax on the whole of the profits, and the unfortunate trader, in determining the amount of his dividend, is left to guess at what their views may be. Uncertainty in such matters is itself one of the worst vices, and here certainty is an impossibility.

"If it be impossible to amend these sections so that they do not apply to trading companies at all, then I say—speaking with all the responsibility of this chair," (you will remember I am quoting from a Presidential address) "and from the experience of all of us in our practice have advised companies under these circumstances—that the country is losing, and will increasingly lose, more by leaving on the Statute Book provisions which discourage thrift than it would ever lose by allowing a few rich men to reduce their sur-tax assessments."

In this connection I should like to quote the following remarks of Lord Kennet, at the annual general meeting, of an important public company of which he is chairman. He was referring to the tax proposed to take the place of the abortive N.D.C. and, at the time he spoke, it was not known what form the new tax would take. But he made some reference to income tax in the following words:—

"The most uneconomic and mischievous aspect of income tax is its refusal, in the interests of the revenue, to exempt from taxation prudent and necessary retentions from profits for re-investment in business in the form of reserves, depreciation, and the like. The Chancellor has now an opportunity of recognising and mitigating that mischief by assessing the new tax on those profits only which are available for distribution. It is said that by retaining all profits such a tax could be wholly evaded, but that is not so. All profits cannot be retained. Shareholders must live, like other people.

"Undoubtedly the effect of such a tax would be to promote the accumulation of capital, but that would be wholly to the good. It would increase employment, tend to smooth out the extreme variations of the industrial cycle, and increase the ultimate yield of a profit tax by increasing the general profit-earning capacity of the country. The Chancellor of the Exchequer might well be afraid to confront the big temporary loss of revenue involved in assessing income tax on distributed profits only, although it would be the right think to do."

There are two, and I think I may say only two, provisions in the Act which seem to me directly to affect us as solicitors. One is s. 103 of the Act of 1918 which requires every person who is in receipt of any income or other assets (not being capital) belonging to any other person, whenever required to do so, to make a return to the inspector. It so frequently happens that solicitors are in receipt of money belonging to other persons that this section, if harshly applied, would bear hardly on them. We do not claim to be outside the section; we accept the position that we are bound by it, and must comply with its provisions. In the year 1933 a deputation from The Law Society attended upon the Board of Inland Revenue, when this was pointed out, and the Board, accepting the view that the section might impose a hardship upon solicitors, gave an assurance that the Inland Revenue would use their powers under it with moderation. They suggested, by way of a concession, that no return should be asked for where the amount in hand did not exceed £15. Small though it is, this is a valuable concession, and it should be recorded in the new legislation.

The other point which affects solicitors as such arises under r. 21 of the General Rules of the 1918 Act, which provides that upon payment of any interest of money, annuity or other annual payment charged with tax under Schedule D, or of any royalty or other sum paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon, and shall forthwith deliver to the Inland Revenue an account of the payment and of the tax deducted, and the Special Commissioners are to assess and charge the payment on that person. It so frequently happens that payments are made by or through solicitors that this rule very closely affects us, and, if the Inland Revenue made use of it unreasonably, it would cause gross hardship. In fact, however, it is, so far as I know, not the practice of the Inland Revenue to assess or charge the solicitor or other person by or through whom the payment is made if the payee can be charged. But where the payee is not available, e.g., is abroad, or is insolvent, then it seems to me it is not unreasonable that the Inland Revenue should require the person by or through whom the payment is made to account to them for the money in his hands, rather than that he should pay it over to someone from whom the Inland Revenue may never be able to recover it. This is simply the principle of "Render unto Cæsar the things that are Cæsar's." Indeed, if the payee is available and solvent, it does not very much matter whether the solicitor or the payee is assessed, for, if the solicitor is assessed, he can recover the amount from the payee. The matter has been before the courts in one or two cases recently. The first is the case of *Rye & Eyre* v. *Inland Revenue* [1935] A.C. 274. In that case Messrs. Rye and Eyre received from their client certain copyright royalties and transmitted them to the owner of the copyright, who resided out of this country. They did not deduct the tax from the amount they paid, whereas, in accordance with the rule just quoted, they should have done so and transmitted the amount deducted to the Inland Revenue. The payee being abroad and not accessible to the Inland Revenue, they assessed the solicitors and recovered the amount from them. The House of Lords held that they were justified in doing so, and it does not seem unreasonable, as otherwise the tax would have been irrecoverable. The other cases on the subject have ultimately turned on some other point and have not affected the general principle above referred to.

Incidentally, it is very desirable to deduct tax whenever it ought to be deducted, and not to assume that you can leave it to the payee to include the receipt in his return, for that does not absolve you from liability, although I understand that in such a case the Inland Revenue will not require payment from you if they do recover it from the payee—which is very kind of them!

As to the law of income tax generally, this, like many branches of law, is easy to state but difficult to apply. The statement is easy: "Income tax is a tax on income." The difficulty is to decide what *is* income. The main antithesis to income is capital; any receipt which is capital is free of income tax. But that does not exhaust the subject. There may be receipts which, though not capital, are not income either, and so not liable to income tax. The chief instance of this is a casual profit which is not by way of trade and not an annual receipt. Casual profits, if taxable at all, are taxable under Schedule D., and may come either under Case 1, Case 2, Case 3 or Case 6. But they can only be taxed under Cases 1 or 2 if the earning is in the nature of a trade, under Case 3 only if they represent an annual payment, and under Case 6 only if they are in respect of annual profits or gains. In order to avoid taxation it is, therefore, necessary to show that they are not in respect of a trade, and are not annual. Unfortunately, the judges have, in my opinion, if I may say so with respect, strained the word "annual" rather harshly against the taxpayer, and have held receipts to be annual which do not seem to me to bear that character at all. It seems to me they have almost construed "annual" as being equivalent to "income" as distinct from capital. Thus, in the recent case of *Wilson* v. *Mannooch* (26 R. & I.T. 343), the respondent made a deal with some builders that he was to receive a share of profits on the resale of certain property, in respect of which he received £500, and subsequently on another deal the sum of £300. Mr. Justice Lawrence, without giving any reasons for this part of his decision, stated, "In my judgment the sums were annual profits of an income nature." For my part I can see nothing annual about them, and I fail to understand why they were so treated.

The kind of casual profit with which many people are very familiar is the proceeds of successful bets. Here the law is rather peculiar, for, generally speaking, while a bookmaker is liable to be taxed on his profits, a backer of horses is not so liable, even although he may make a practice of betting. The matter is put clearly by that master of clear thought and clear expression, Mr. Justice Rowlatt, in the case of *Graham* v. *Green* [1925] 2 K.B. 37. Mr. Green made a habit of betting on horses at starting price from his residence. This was his only means of livelihood. Incidentally, it is rather surprising to find that it is possible to make a living

in that way. Not many people have succeeded in doing so. Mr. Justice Rowlatt said in that case :—

"What is a bet? A bet is merely an irrational agreement that one person should pay another person something on the happening of an event. *A* agrees to pay *B* something if *C's* horse runs quicker than *D's*, or if a coin comes one side up rather than the other side up. There is no relevance at all between the event and the acquisition of property. The event does not really produce it at all. It rests, as I say, on a mere irrational agreement . . .

"It is said that the appellant, by continually betting from his house or from any place where he could get access to the telegraph office, had set up a vocation. That is contended by the respondent on the facts of this case, and certainly the contention is one which, if sound, has very startling results. A loss in a vocation, or a trade, or an adventure, can be set off against other profits, and we are face to face with this result, that a person earning a profit in some recognised form of industry, but having the bad habit of frequently, persistently, continuously and systematically betting with bookmakers, might for income tax purposes set off the losses by which he had squandered the fruits of his industry against his profits of industry, a very remarkable result indeed and one, I am afraid, which would be of very wide application. Allowances are granted to the income tax payer because of the family he has to support, and we are now threatened with a further allowance in respect of the loss which he makes by habitual betting. It certainly sounds very remarkable, and would entitle a person, when he wastes his earnings by betting, to make the State a partner in his gambling. However, the question must be faced.

"It has been settled that a bookmaker carries on a taxable vocation. What is the bookmaker's system? He knows that there are a great many people who are willing to back horses, and that they will back horses with anybody who holds himself out to give reasonable odds as a bookmaker. By calculating the odds in the case of various horses over a long period of time and quoting them so that on the whole the aggregate odds, if I may use the expression, are in his favour, he makes a profit. That seems to me to be organising an effort in the same way that a person organises an effort if he sets out to buy himself things with a view to securing a profit by the difference in their capital value in individual cases.

"Now we come to the other side, the man who bets with the bookmaker. These are mere bets. Each time he puts on his money at whatever may be the starting price. I do not think he could be said to organise his effort in the same way as a bookmaker organises his, for I do not think the subject-matter from his point of view is susceptible of it. In effect, all he is doing is just what a man does who is a skilful player at cards, who plays every day. He plays to-day and he plays to-morrow, and he plays the next day, and he is skilful on each of the three days, more skilful on the whole than the people with whom he plays, and he wins. But it does not seem that one can find, in that case, any conception arising in which his individual operations can be said to be merged in the way that particular operations are merged in the conception of a trade. I think all you can say of that man, in the fair use of the English language, is that he is addicted to betting. It is extremely difficult to express, but it seems to me that people would say he is addicted to betting, and could not say that his vocation is betting. The subject is involved in great difficulty of language, which I think represents great difficulty of thought. There is no tax on a habit. I do not think 'habitual' or even 'systematic' fully describes what is essential in the phrase 'trade, adventure, employment, or vocation.' All I can say is that in my judgment the income which this gentleman succeeded in making is not profits or gains, and that the appeal must be allowed."

The question was considered from rather a different aspect in the recent case of *Down* v *Compston* (*Solicitors' Journal*, 1st May, 1937, p. 358). There a professional golfer, in addition to his ordinary duties, habitually engaged in private games of golf for bets from which he derived substantial sums of money, amounting, in some years, to as much as £1,000 a year, after deducting sums lost. The Inland Revenue argued that the case was to be distinguished from *Graham* v. *Green* on the ground that the winnings occurred and arose out of the course of his vocation as a golf professional, and were therefore taxable as much as the Easter offerings of a clergyman or the gratuities of a waiter. It was argued for the taxpayer that the winnings did not arise out of his vocation, but from bets which his vocation merely gave him the opportunity of making. Mr. Justice Lawrence adopted the latter view, so that both this case and that of *Graham* v. *Green* justify your advising your clients that they can disregard in their income tax returns any sums they have received on successful bets, unless they are bookmakers, in which case the position is precisely the reverse.

Now I am afraid that all of you know but little more about income tax after these remarks than you did before I began them. But do not let this worry you. Fortunately, The Law Society's curriculum for students now includes the subject of income tax and students have the advantage of an admirable book on the subject by Mr. S. W. Rowland. Most of you have articled clerks, so that you will have at your hands a perennial source of knowledge on this subject on tap when required. I read lately that, before the Boer War, when Kruger was President of the Transvaal, he was approached on one occasion by an old school-fellow who asked him if he could not find him a job in the Government, to which the President replied that he would do so if he could, "but," he added, "it is difficult, for you are too ignorant to be a clerk and there are at present no vacancies among heads of departments."

I believe it is usual, after reading papers at these meetings, to invite members to ask questions, but I hope and trust that, on this occasion, you will do nothing of the sort, for it is very probable that, if you were to put any questions to me, I should be unable to answer them.

But I would venture in all seriousness to appeal to the powers that be, now that we have a Chancellor of the Exchequer who can appraise at its true value an excellent piece of drafting, not to relegate the draft Bill, produced by a Committee of eminent experts after some nine years of gestation, to the limbo of forgotten measures. Every income tax payer would welcome such a simplification of the law which he is supposed to know. Is it too much to hope that the Government will take up this Bill in the coming Session?

Mr. J. W. GREY (London) suggested that a new Bill should provide that solicitors might be allowed the cost of replacing text-books, as they had to do in most years to keep pace with legislation.

Mr. H. GALLIENNE LEMMON, M.A., LL.M. (King's Lynn), read the following paper:—

SOME ASPECTS OF THE LEGAL EDUCATION OF A COUNTRY SOLICITOR.

Mr. President, and fellow members: Much as I appreciate the honour of being allowed to submit this paper, I feel that I must not allow my natural diffidence to lessen the emphasis with which I offer you my views on this subject, nor I trust will you think that any consequent egotism induces me to attach undue importance to them. Although I am sure you will concede that perfection has by no means yet been attained, the articled clerk of to-day certainly enjoys far more advantages in the course of his legal education than were available in my time. I am here setting out to illumine some of the view-points that I have descried during my 30 years and more of country practice, and I hope that you will at least find some few grains of wheat amongst the chaff.

It is obvious that first and foremost a sound knowledge not only of law, but also of legal principles is essential, for, to say the least, without both of these, the examinations of The Law Society could prove an insuperable obstacle. Secondly, I consider that equally important is the ability to apply this theoretical knowledge to practical purposes, and thirdly, what I feel to be most valuable of all, is a thorough knowledge of human nature and the ability to size up a client's mentality and character, as well, of course, as his pocket. We all, I think, remember the classic story of the articled clerk who, faced with the question "What is the first step you would take after being instructed by a client to commence an action in the High Court?" answered, "Get a cheque on account of costs." This, at any rate, showed that this candidate possessed to the full my third essential to success. I do not stress an equally vital qualification, that of being thoroughly and altruistically honest, for we all, I hope, consider that every solicitor has this. It is a truism to say that he ought to have it, nowadays more than ever, and that in spite of the very stringent rules that bind us, our profession actually contains fewer black sheep than any other. The standards both of education and of common honesty have undoubtedly risen of recent years, and, as to the former, for myself I am only too relieved to think that there is no need for me again to submit to the ordeal of the final or any other legal examination—for I am very certain that I might ignominiously fail to pass.

Taking my first premise, the necessity for a sound knowledge of law and of legal principles—there is, of course, a considerable difference between the purely academic lawyer or jurist and the everyday or practical lawyer which is what I imagine

our Society aims at producing—and, in like manner, a great difference between a knowledge of law and a knowledge of legal principles. A knowledge of legal principles, if inherent or well grounded, may to a great degree render unnecessary a deep knowledge of the law itself. My predecessor in practice, as sound a lawyer as I have ever met, had to my astonishment such a command of legal principles that the ability to remember decided cases was quite unnecessary—almost unconsciously he would find the right answer and, what was equally surprising, without the aid of text-books or reports of which he possessed a very meagre library indeed. I have never so much appreciated the fact that an ingrained feeling for a principle of law renders almost unnecessary a mind crammed with reported cases, as when I had occasion to discuss with him the various matters that came up for decision in the course of practice. I feel constrained, therefore, to beg that the education of our articled clerks may remain primarily practical and not be allowed to become too academic. Let us keep to the roots of the law as the late Lord Shaw recommended and the results will be what we desire. I am quite aware that what I have said so far applies equally to London as to country solicitors, and, if you agree with the soundness of my views, it is all to the good. As solicitors, whether London or country, we have to deal with practical everyday problems, not with academic theorisings, however valuable the latter may prove to be when considering the ethics of the law. I well remember as an articled clerk, after a successful Honours course at Cambridge, the time when I was first faced with the preparation of a very ordinary abstract of title. To be quite frank, I almost wept over it, while at the same time I felt, and probably was, quite capable of giving a more or less sound opinion on a case for the advice of counsel.

Advocacy in the county court or the police court is an inevitable concomitant of a general country practice, and I cannot help thinking that here, most of all, the practical, commonsense, and ready-witted solicitor will score every time. It is a great pity that some experience in this branch of our work is not offered to articled clerks as a recognised part of their legal education, apart from what they gain through their own offices. It could very easily be done, for parties of students could, as a part of the curriculum of The Law Society's School and under its invaluable auspices, be taken to the High Courts to listen to the leading advocates of the day, and to the various police courts of the Metropolis or wherever their course of legal lectures may be held, and thus given the opportunity of learning the vital importance of a mind attuned to the exigencies of a case from moment to moment, a real knowledge of the legal principles involved, and, above all, sufficient self-confidence to stand firm when necessary with judge or magistrates as well as with the other side.

A knowledge of law helps, of course, in advocacy, as in other branches of practice, but almost alone in importance in that branch of a solicitor's work is a quick wit and the self-confidence of which I have just spoken. These cannot readily be obtained in a law school, and while the actual working period of articles is curtailed as it is under present conditions by compulsory attendance at a law school, I feel that the advantages offered by the latter should include this very practical opportunity of seeing the legal machinery in working. Theory is at all times necessary, but practice is absolutely essential to a country lawyer.

In this connection I would like to refer to the avenues that are open to the country solicitor, and to him more especially than to his brother in London, in the way of county court work. The solicitor branch of the profession, if it chooses so to accept it, enjoys exclusive audience in such important matters as rent restriction and workmen's compensation, and every effort should, I think, be made to conserve this privilege if and when the jurisdiction of the county courts is extended. The Report last year of the Departmental Committee on the Despatch of Business at Common Law (a copy of which the President has very kindly lent me) is not unanimous on this matter, but just in passing I would stress the importance of continuing our efforts to prevent any encroachment upon our rights in this respect, though this is perhaps not strictly within the scope of my paper. We might, however, with advantage, make more use of the present opportunities, where advisable, for ensuring the hearing of cases in the county court, e.g., under s. 43 of the County Courts Act, 1934. This would increase the amount of advocacy accordingly. It may, however, be argued that to brief counsel not only relieves the solicitor of a great deal of responsibility, but also brings in nearly the same fee. From one point of view this may be true, but from another standpoint it means a loss of experience, and it is not always a good thing to shirk responsibility. To shoulder such as comes one's way is to gain enormously in practical knowledge and self-confidence, and this lesson is one to be urged upon every young country solicitor as upon every articled clerk.

I would like now to refer to the specific kind of legal knowledge offered by The Law Society's own central school. While it must to some extent be academic and theoretical, yet it seems to me that there is an increasing danger that the tuition offered may become modelled too much on university and juristic lines. There is surely not the slightest need for The Law Society to attempt to compete with the universities and those law schools that have totally different objectives in view and that neither desire nor profess to give the practical teaching so much as *sine qua non* in our own branch of the profession. The "Honours" examination is, of course, voluntary and non-essential, and students need not sit for this unless they wish; in other words, it forms no part of the obligatory qualifications of a solicitor, and may, therefore, be made as searching and even as unpractical as the Council may think fit, without the least detriment to the vital "Pass."

The last two presidential addresses delivered, in 1936, by Sir Harry Pritchard, and in 1937 by Sir Hubert Dowson, to the students of the Society's school, contain a very great deal of intensely practical advice and it is encouraging to note how very largely both these eminent solicitors appeared to share the views that I now venture to put forward for official approval and action. Sir Harry Pritchard stressed the importance of knowing the principles as well as the details of the law and the equal importance of keeping that knowledge up to date—but he also went on to say that the law is not everything, and that the success of every case depended very largely upon the way in which that case would be prepared, that is to say, on the practical handling of it, the facts brought forward, and the proofs adduced in support. Later, in his same address, he even advised the young solicitor to make himself acquainted with the general methods of local industries and the technical terms used in such trades. I know only too well that these matters cannot possibly be taught in any law school nor, as a rule, in the average solicitor's office, but must be acquired by the man himself according to his opportunities, though, when acquired, they bear fruit a hundredfold.

The late Lord Reading attributed his own success firstly to his ability to keep himself in good spirits and secondly, to an intuitive power of putting his finger on the crucial point in each case set before him, and I can with all modesty corroborate to the full the value of this second point. In nearly every contentious matter at least, there is some one point, question, or fact, on which the closest attention should be concentrated, not, of course, to the exclusion of all the others, but with a view to elucidating, answering, or establishing it in favour of the client at the very outset of the investigation. When that has been done, one is more than half way on the road to a successful decision. The ability to speak and write good English is also a most useful accomplishment, but involves a sympathetic and intelligent study of our language and of the finer shades of meanings ready to hand in a varied and carefully appreciated vocabulary. It may be said that these also are virtues as essential to the London practitioner as to his country cousin, but it should be borne in mind that business in London is largely agency, in which the crucial letters have usually already been written by the country professional client; as also that specialist counsel is, I believe, much more frequently consulted in London, whereas the countryman is more often than not compelled for various reasons to rely upon his own strength, and to stand or fall by his own drafting, his own correspondence and his own opinion.

Sir Hubert Dowson in his address to the students last February made a suggestion that I had not noticed as having been put forward before, namely, that of adding to the present examination papers one on the Law, Practice and Usage of the Solicitor's Profession. It is absolutely true that many solicitors are lacking in a knowledge of these matters, and, if I may dare to say so, of the ethics of the profession as well. Wise tuition in these subjects would save many a headache and many a heartache, and I would venture very heartily to endorse this admirable suggestion.

In 1935, at the Provincial Meeting of the Society at Hastings, a paper was read by Mr. Herbert Warren on Legal Education—wider in scope and more vigorous in treatment than my present contribution. Mr. Warren appeared to attach the greatest value to what may be called the practical elements of the profession and made the suggestion that classes and lectures should be arranged by the Society's Law School on such subjects as the preparation of contracts for the sale of real and personal property, the preparation of abstracts, and the investigation of title and completion of leases, wills and commercial documents in general, including the preparation of cases for counsel. He also mentioned the practice of the various courts, the etiquette of the profession and the general management of offices. Mr. Warren thought it a little ambitious

for The Law Society to start classes for pure law in competition with other teaching agencies such as the various universities and professional coaches, and I have already ventured to express my own views on that point. It can be seen all through Mr. Warren's valuable paper that he continually urged the importance of the practical side and that the success of, and apparent necessity for, private coaches seemed to show that the Society's classes did not possess the value that had been anticipated. It is, of course, true that busy solicitors in active practice, especially in the country, may be either unable or unwilling to afford the time for lecturing in London or for the preparation and marking of examination papers, and the difficulty of finding qualified persons competent and ready to do this work may have conduced to the appointment as lecturers and examiners of University professors, barristers and non-practising lawyers, but there must be some way out of this dilemma. I myself should like to see The Law Society's classes conducted entirely by solicitors who have had at least some years of successful practice in either London or the country. I would not insist upon experience in practice on the solicitor's own account, for, invaluable as that may be, responsibility in any office of standing must prove of almost equal and sometimes perhaps even of greater value for this purpose.

I believe that registrarships in Chancery are the only offices of their kind actually restricted to qualified solicitors, who, in addition must be of not less than five years' standing, and I could wish that there were more such opportunities of advancement in our branch, especially as I feel that on retirement from office, often in the prime of life, teachers of this calibre would add immensely to the strength of any tutorial staff.

Looking back, too, on the experience of my nephew, lately articled to me and recently qualified, I was struck by the fact that he did not regard the lectures and classes at The Law Society's School in London with great favour. His success must in the end be attributed to the efforts of a well-known firm of private law coaches which, of course, is really not as it should be. He obtained plenty of practical experience in my office, but, here again, his time was sadly interrupted by attendance in London for the compulsory lectures and for the coaching, and a considerable period of his articles was taken up in this way. It should not be difficult to obviate this, and at the same time to ensure adequate tuition in examination subjects. The additional papers suggested by Mr. Warren and by Sir Hubert Dowson would accentuate the importance of an articled clerk making better use of his opportunity for office work and would bring home to him the necessity for acquiring the fullest possible knowledge of the practical side of legal practice.

A friend of mine, a Doctor of Laws of Cambridge, a barrister and a very responsible officer of another of our great universities, has been good enough to give me the benefit of his experience as a professional and whole-time teacher of law, and I am sure that you will be glad to hear his views. Admittedly he is first and foremost an academic lawyer, but he is also a jurist of some eminence, and his feeling is that while the universities exist to give an academic training and a thorough grounding in the general principles of law, they cannot and do not try to compete with professional bodies, who, of course, have their own particular standards and requirements. He finds that the number of students who read for law degrees is yearly increasing, and that it is often possible to combine this with concurrent study for some professional qualification, legal or otherwise. Especially is this the case with the Bar examinations which are often taken by men whilst still at a university, but although the courses prescribed by the different universities vary, they are not usually so compatible with our own syllabus. In my own case, the work I had to do in Roman Law at Cambridge has proved over and over again to have helped very considerably in my understanding of our own legal system and has greatly added to my interest in even the humdrum bread and butter matters of practice. At the same time, I realise that it would be unwise to attempt to advise every student to take a university degree. From a practical standpoint, I consider the exemption from the Intermediate to be a great mistake. I felt this myself for many years, as I have sadly missed the benefits of having read Stephen's Commentaries which then and until quite recently have been compulsory for that examination. The shortening of articles allowed consequent upon a university law degree is not perhaps so serious a detriment, but I do say that every articled clerk ought to be made to take the Intermediate, giving as it does (or at any rate with "Stephen" used to do) such a very useful, general and somewhat bird's-eye view of the English legal system. From another point of view this would ensure more continuity in book work, and the "article," being then less likely to roam at a loose end in the office, would be spared the sudden and dreadful realisation that the "Becher's Brook" of the Final was looming only a few months ahead.

The suggestion already made by others that articles of clerkship should be preceded by attendance at a law school appears to possess considerable merit if limited to, say, six months and arranged so as to include the practical, visual and oral experience of court work that I have already suggested. This would obviate the deplorable curtailment of practical office work during articles that now is unavoidable owing to the compulsory attendance in London or at some provincial centre. I see much advantage also in making obligatory what is now only optional, viz., a seat in a London agent's office for a like period and this might well be combined with a certain amount of bookwork for the Intermediate. In this way the clerk would gain additional interest in his work, especially if he were allowed some supervision from The Law Society's School during that time.

My friend also points out that while at one time even in the larger universities (other than Oxford and Cambridge, where the whole time principle has always been adopted) the teaching of law was largely entrusted to part time lecturers; this system has now been or is in course of being abandoned for obvious good and sufficient reasons. It is, of course, a system to be deprecated because extraneous and often conflicting interests must necessarily impair the efficiency of the lecturer, and the concentration of the lecturer on his class, and there is naturally in such circumstances the added difficulty of keeping in proper touch with modern advances in the teaching of law, which has now become as specialised as the practice of it. If this be the attitude adopted by the majority of the university law faculties, then it seems to follow that The Law Society's School falls between two stools in that it is neither fully academic nor really practical. Examination successes do not by themselves count for such a very great deal, because it is undoubtedly possible for a student to be crammed for a pass without his possessing any very real knowledge of what he is about. That is not true education, and the fact that private coaches are so successful is not a testimonial to the system now in vogue. Rather is it a definite slur that such methods should be necessary at all when the Society's official and costly facilities exist for the same purpose. It will be a great pity if some improvement cannot be devised. I would like to make one minor point, and that is that the number of students in a class must be limited to give each a reasonable amount of individual attention, and small classes seem essential if the teaching is to be at all adequate.

The opportunities open to the Society in the way of really practical tuition are immense, and I might almost say unique, seeing that we are in point of fact absolute monopolists. Clearly we possess the only key to our branch of the profession, and it seems deplorable that these brilliant chances should be thrown away or stultified in an endeavour to prepare for university degrees, a matter best left entirely to the universities concerned, none of which attempt to interfere with us in our own special province.

It may be said that a thoroughly practical and comprehensive syllabus would necessitate the lengthening of articles. Would this be a disadvantage? How many articled clerks serve for the full five years? Very few indeed, owing to the many cases of exemption now given to the holders of various certificates and degrees. I myself only had to take articles for three years, and this must be admitted wholly inadequate as a preparation for the responsibilities of private practice. I do not necessarily mean a lengthening of the statutory period of five years, but I do mean that except in the case of a university honours degree in law no shortening of that period should be granted, and even then, not below, say, four years in any event. A university graduate should perhaps also be exempted from attendance at a law school or, at any rate, allowed to make such attendance as part of, and not as extra to, his period of articles. This ought not to militate against parents letting their sons take law degrees, for the advantages of these are so obvious that I imagine all who could would still do so and those who could not would have, at least, the benefit of the full five years' experience under articles. I am rather aiming at the exemptions given (somewhat freely as it seems) on certificates covering examinations in no way coincident or comparable with the specialised examinations of the Society. These exemptions could, no doubt, be restricted without much difficulty or real hardship, and in so doing the Council would in my view definitely improve the practical value of the Society's qualification.

In conclusion, while I do not propose to apologise for having indulged in criticisms that may possibly be considered to

be revolutionary, I do ask you all, and in order of primary importance I do respectfully beg the Council to accept my assurance that this paper is the result of much careful thought, and that it has been evolved out of my own hardly earned experience as a country solicitor in a small provincial town.

The fact that I have also had some years' service in the Solicitor's Department of a Government office in London may, and I hope will, add some weight to my remarks.

Mr. C. L. NORDON (London) hoped that the Education Committee of the Council would pay attention to this paper, which contained matters of great importance. He thought that all members would agree that it was deplorable that the newly qualified solicitor should be of very little practical use in an office. He cited the example of a young man with a brilliant first-class degree from Cambridge who was practically useless to him. He thought that the real remedy lay in remembering that a solicitor was as often consulted on questions of policy as on questions of law. Therefore he must be practical: he ought to be taught such subjects as logic, literary expression, economics and commercial practice. The late Sir Hugh Fraser had been wont to relate the story of one of these brilliant pupils to whom he had entrusted the task, while he was in court, of preparing a draft of separation. On his return he had found the papers on his desk with a little note saying, "See Macbeth, Act III, Scene I, line 1." On consulting his Shakespeare he had found that the passage read: "I cannot do this bloody deed." In Mr. Nordon's opinion every young man in a solicitor's office should learn shorthand and typing. The suggestion might sound humdrum and even derogatory, but at present the principal had a pupil who was useless to him, and if the pupil could write shorthand and type, then the principal would be able to dictate work in the form in which he wanted it done, and later on, the pupil, having learnt the form, would be able to produce it himself. A second great point which the Education Committee ought to consider was the freedom of the student from examination cares during his articles.

Mr. D. T. GARRETT (London) asked Mr. Lemmon if he would define more precisely his criticisms of the examinations of The Law Society as held at present. Mr. Lemmon had stated that the examinations were too academic, but he would ask him to bear in mind that the practice of the law was not only a trade but also a learned profession. At the same time it was a democratic profession; it always had been, and he hoped it always would be. A man to whom university, and perhaps even first-class school, education had been impossible for financial reasons could and often did—and he hoped in the future often would—rise to the top and become a really worthy representative of the solicitors' profession. These two facts must be borne in mind. It was sometimes urged that a university degree should be a *sine qua non*, but the Council had always stood out against this, and he hoped it always would. In its examinations it had to test a man from two aspects: that of his legal education and that of his vocational training. He did not see how any other course could be followed, even though it inevitably meant covering the ground twice if the candidate already held a university degree.

Mr. LEMMON, in reply, emphasised that he had not criticised the examinations of The Law Society in any way but had merely given expression to certain difficulties which he, as a country solicitor, had encountered. He agreed that the examination must involve both principles and practice. The President had said only that morning that it was impossible to insist on a university degree, and he himself had said the same thing. He did not attach too much importance to it himself, although he had one and had found it very useful.

Mr. JAMES WHITESIDE (Exeter) read the following paper:—

AN ASPECT OF THE NEED FOR LAW REVISION.

It is not claimed for this paper that it strikes an original note. The need for the revision of ancient law so as to make it more applicable to modern conditions and to twentieth century attitudes of mind as to the aim and purpose of social order is already well recognised. In 1934, the Lord Chancellor established a Standing Law Revision Committee to consider such questions on the subject as from time to time he referred to them. Upon the recommendations of this Committee valuable reforms have already been made; the rules concerning death in relation to tort, the rules governing the awarding of interest in civil proceedings, the rules concerning contribution between tort-feasors, have all been amended and revised and the position in law of married women has at last been assimilated to that of a feme sole. Furthermore, the Committee have made recommendations (which have not yet been given statutory effect) concerning limitation of actions, the Statute of Frauds and the doctrine of consideration.

The Law Revision Committee have not yet considered any question relating to criminal law which, as it stands to-day, is in many respects cumbrous and illogical.

The criminal law of England might be regarded from two aspects: one is as it is seen from the Court of Criminal Appeal, the Central Criminal Court and the Assizes; the other, with which I am mainly concerned, is as it is seen from courts of summary jurisdiction in which the greater bulk of it is daily administered by thousands of laymen sitting in hundreds of courts. The object of this paper is to show how important it is that criminal law, and in particular those parts of it which concern courts of summary jurisdiction, should receive the immediate attention of the law reviser—whether it be the Standing Law Revision Committee or a committee specially established for the purpose.

At a time when the lay magistracy is the object of much intemperate and uninformed criticism it is surely the duty of the legislature to provide a law simpler in form, easier to administer and gathered subject by subject within the bounds of a single statute.

This need has been recognised and acted upon in certain recent statutes which point the way to what courts of summary jurisdiction are calling for. The law in relation to children and young persons was consolidated in 1933; the National Insurance Acts are frequently reviewed and improved; the Factories Acts have just been consolidated; a new Firearms Act embracing all the previous law and something more is passed from time to time. For all these enactments Parliamentary time is readily given. The reason for this is as plain as the fact; each of the subjects of these Acts is the sole concern of an important and active government department whose interest it naturally is that the branch of law they are called upon to administer is complete and logical.

The mass of law upon which magistrates adjudicate, scattered untidily as it is all over the statute book, remains so scattered because it is nobody's business to collect it into a neat bundle, discarding the useless, renovating the faded and repairing the broken. Not the most conservative of lawyers would claim for the criminal law that it should be changeless in a changing world. While the existing committee is continuing its necessary and useful work there is urgent need for another committee to consider the revision of criminal statute law and to carry out the initial work of the spring-cleaning process long overdue. Such a committee should not only include the most eminent criminal lawyers, but also stipendiary magistrates, clerks to justices and solicitors who regularly practise before the inferior courts.

The business of such a committee would by no means be confined to recommending changes in substantive law. Perhaps their most valuable work would be in overhauling and re-casting the law of practice and procedure in courts of summary jurisdiction. They would need no suggestions of where reform is needed; once allowed to go to the water they would drink deep.

Courts of summary jurisdiction have been aptly described as "courts of all work." The work of lay magistrates embraces in some part the original jurisdiction of each branch of the Supreme Court of Judicature and much in which their jurisdiction is exclusive. Primarily the business of the court is devoted to criminal offences of a less serious nature, but it has, in addition, an extensive civil jurisdiction concurrent with that of the Divorce Division and the Chancery Division. In most of its many-sided jurisdiction the procedure is governed by the Summary Jurisdiction Acts.

It is difficult to describe the Summary Jurisdiction Acts in terms of moderation. They are verbose, clumsy, unnecessarily technical, in conflict one with another; they contain much that is redundant and much that is ambiguous. There are few courts in the country where they are not widely honoured in the breach.

The foundation of the Acts is that of 1848, upon which many subsequent Acts have been superimposed. If the judicial work of the country is considered in terms of quantity, it is a demonstrable fact that lay justices carry by far the heavier load and they are entitled to complain if they are compelled to work with worn-out tools.

It would not be difficult to overload the argument with examples. The few that are given can be added to by all who have practical experience of courts of summary jurisdiction. Many persons charged before the courts with minor offences are motorists. It often happens that a motorist charged with a minor offence is known to have been convicted many times of minor offences in many widely-scattered parts of the country. The most recent Summary Jurisdiction Act (Service of Process (Justices) Act, 1933) recognises the principle that he may appear by letter purporting to be signed by him. How may the previous convictions be proved in the absence of the defendant, who, if he were

present, would probably admit them? The answer is that each conviction must be proved by a certificate signed by the clerk of the convicting court coupled with evidence in respect of each conviction identifying the defendant with the person mentioned in the certificate. In some courts the previous convictions are noticed by the justices whether the defendant is present or not; in properly conducted courts the previous convictions are not mentioned unless they are strictly proved. In serious cases the expense of proving the convictions would be justifiable; in minor cases it is not. The effect is that where a motorist has previous convictions by other courts it is positively to his advantage not to appear in answer to a summons.

A second example: The power of justices to try summarily an indictable offence is now contained in the Criminal Justice Act, 1925, an Act which, on this subject, reproduces in part the wording of the Summary Jurisdiction Act, 1879. Two recent cases (*R.* v. *Sheridan*; *R.* v. *Grant*) have focussed attention upon this law and have caused considerable misgiving among magistrates. An accused person who is found guilty or who pleads guilty must be sentenced by the convicting court. He may not be committed for trial however bad his previous character, disclosed to the court after conviction, is found to be. The effect of these decisions, read with what is plainly enacted in the statute, is that a court of summary jurisdiction, when considering whether or not to deal with a case summarily, must have regard to the character and antecedents of the accused, or, in other words, must hear particulars of his previous convictions, if any, before the responsibility of adjudicating upon his guilt or innocence is taken. Justices do not take kindly to this: they have a grim feeling that in acting according to this procedure, they would infringe what they have always treated as a golden rule of English justice. Justice does not manifestly appear to be done when previous convictions are considered before guilt is found, even if the justices, with the acme of judicial perfection, exclude from their minds the irrelevant information of previous convictions when they apply themselves to the issue of guilt or innocence.

A right to plead *autrefois convict* after finding of guilt makes imperative, what would otherwise be admitted to be desirable, that sentence shall be imposed by the convicting court. It must soon happen that a magistrate will die or resign from the commission during the period when a guilty person is awaiting sentence on remand. He will then be able to claim his legal right to be discharged—not acquitted, for he has been convicted, but free from punishment, because no court can be found with the power to impose a sentence. The recently consolidated Children and Young Persons Act anticipates the last-mentioned difficulty by enacting that where a finding of guilt has been recorded by one court of summary jurisdiction, a court differently constituted may later sentence without hearing evidence as to the commission of the offence.

The law in relation to appeals from courts of summary jurisdiction satisfies neither the legal nor the lay mind. On the very day that this paper was written (26th June, 1937) there appeared in *The Times* a report of a man who sought to appeal to the Surrey Quarter Sessions against an order made by a petty sessional court to destroy his dog which had been adjudged to be dangerous and not kept under proper control. The court decided (quite rightly and with ample authority to support their decision) that they had no jurisdiction to hear such an appeal.

Three years ago a duke was caught in a trap which had existed since 1837—s. 2 of the Act of that year. In seeking to appeal to the divisional court he transmitted his case to the court *before* he had served it on the other party—he should have done these things in the other order. The slip was irremediable and resulted in a total failure of jurisdiction in the High Court. Out of this evil came good, for the Rule Committee of the Supreme Court (there is no Rule Committee of courts of summary jurisdiction) immediately afterwards changed the rigid technical requirement of the law, a requirement for which there had never been the slightest need.

The revision of the Summary Jurisdiction Acts cannot be long delayed; the revision required is not drastic, but it is none the less urgent. The machine is running but it is not running smoothly; it is creaking and rusty. The need is not so much for replacement as for repair.

The substantive law administered by Courts of summary jurisdiction cries aloud, in many of its branches, for the same revising hand. For example, consider in juxtaposition two things which the law regards as dangerous, one to life and the other to morals—firearms and automatic gaming machines. The law as to firearms is comprehensive and complete, and is entirely the production of the post-war years; the statute law relating to automatic gaming machines began in 1541 and ended in 1854—about half a century before the automatic gaming machine as we know it to-day first began to shout the odds. The law must be interpreted by lay justices from a multitude of judgments of the Divisional Court cited with remarkable facility and, it seems, judgment by judgment, evenly by the prosecution and the defence. When a clerk to justices goes into court and sees eight or nine volumes of the law reports on one side of the table and a similar number on the other, he knows instinctively that there is a Gaming Act case before the court, and he immediately sends for a dozen or so more volumes to assist him to advise the Bench. Even when the major question at issue is decided against the defendant, there remain other points complicated and technical to be decided. The power to order destruction of the offending machines is dependent upon the question under which of several Acts was the search warrant issued, and, although the warrant unimaginatively required the person executing it to bring before a justice of the peace *all* persons found on the premises, by him to be bound over in sixteenth-century language "no more to playe haunte or excise from thenceforthe" at a common gaming house, a recent High Court decision, with which no one would quarrel says, in effect, that the term "all persons" shall not be construed to mean *all* persons (*Roden* v. *Brett*).

Yet the process of extracting all the ancient law and placing it subject by subject within the bounds of a single statute is not an end in itself but merely a means to an end. We can see in our law, almost wherever we look, the wisdom of the past, and it would be stupid folly to neglect the lessons of the past, but in the task of statute revision and consolidation a too rigid stand must not be taken upon past sufficiency. The old order has changed and the new order calls for a nicer adjustment to modern ways of thought. It is, of course, realised that the law, particularly the criminal law which everyone is presumed to know and must observe at his peril, must be certain and as far as is possible permanent. Constant changes would be a nuisance and a danger. It is right and proper that there should be a time lag, as there has ever been, between changes in behaviour and changes in law, but in a modern state, it is submitted, law should not be suffered to remain out of touch with modern needs simply because it is nobody's business to initiate suggestions for it to be amended.

The Larceny Act, 1916, full as it is of anomalies and archaisms, is a standing example of codification at its worst. Perhaps this is excusable when it is remembered that its date falls at about the middle of the Great War. In its title it sets out to "simplify" the law of larceny and goes on to retain all the special forms of larceny handed down from the day when the criminal was effectively turned from his evil-doing by the common hangman.

It is still a special offence to steal yarn in process of manufacture, for which the offender is liable to fourteen years' penal servitude. If he steals coal from a mine he is liable to two years' hard labour; if he steals it from a railway siding it is simple larceny, for which the punishment may be five years' penal servitude, but let the railway siding be in a dock, then the maximum punishment is fourteen years' penal servitude, for stealing in a dock is a special form of larceny. If a man steals your jewellery he may be given up to six months' imprisonment by the justices, or five years' penal servitude on indictment; if he steals your horse, cow, sheep or pig, he must be tried on indictment and may be given fourteen years' penal servitude. If he steals your dog (and in these days of competitive dog-breeding, dog-showing and dog-racing your dog may be extremely valuable) he has committed an offence quite outside the scope of the codifying Act of 1916 (unless he has a previous conviction for dog stealing), but, under the Act of 1861, he must be dealt with as for a summary offence. By a curious limitation of s. 32 of the Act to "any chattel, money or valuable security," if the man with intent to defraud obtains your dog by false pretences, he commits no offence known to the criminal law, for a dog, not being the subject of larceny at common law, is not a chattel within the meaning of the section (*R.* v. *Robinson*). The consolidation of a branch of the criminal law as was done in the Larceny Act, 1916, is not recommended as a pattern for future attempts to consolidate any branch of the criminal law.

In the modern day, when the theory of punishment is slowly emerging from the retributive to the reformative, it is often felt that even the criminal law might be cautiously extended to include blameworthy acts which have not hitherto been crimes. The criminal law of England does not recognise the Roman law of *furtum usus*, and one remembers how, from the coming of the first motor car until 1930, there was no offence committed by one who drove away a motor car with every element of stealing the car except that of an intention, at the time of taking, permanently to deprive the owner of his property. This defect has been repaired as to motor vehicles

only; the law remains unaltered as it relates to aircraft, railway trains (one was so taken in France last year), bicycles and every other kind of property.

It sometimes happens that the judges take upon themselves the task of creating new law—at least, one has justification for thinking so. In 1932 a woman was charged at the Central Criminal Court on an indictment containing two counts. The first was in the following terms: "that she did by certain false statements to wit that a man, whose description she gave, had hit her with his fist and taken from her handbag (money and a receipt), cause officers of the Metropolitan Police maintained at public expense for the public benefit to devote their time and services to the investigation of false allegations, thereby temporarily depriving the public of the service of the said public officers and rendering liege subjects of the King liable to suspicion, accusation and arrest, and in doing so did unlawfully effect a public mischief." The second count charged a similar offence with a variation in the sum alleged to have been taken. The defendant admitted the facts, but it was submitted on her behalf that the indictment disclosed no offence known to the law. The learned Recorder of London postponed sentence until an appeal on the question of law had been decided by the Court of Criminal Appeal. The appeal was dismissed. The learned Recorder, binding the woman over, said: "You realise you are a public character because you have made law. Now go and be a good private character" (*R.* v. *Manley*).

This case is mentioned at some length because similar facts had arisen time and time again before the *Manley Case* was decided. Almost every police officer could recount identical cases from his own experience which had not been the subject of a charge because they were not in terms either the subject of a statutory offence or of a previous decision binding upon the inferior courts. One would not hamper His Majesty's judges in their powers of finding that such and such facts, never hitherto the subject of a criminal charge, disclose a common law misdemeanour as an act tending to the public mischief, but it must be remembered that a judge of the High Court rarely sets the law in motion, and one could not permit a police officer to engage in daring experiments in the hope that a judge of the High Court will agree with him that this or that is an act tending to the public mischief. In spite of this one example, one might presume so far as to speak for His Majesty's judges in saying that Parliament must shoulder its own burden as a law-making authority.

The suggested committee might also consider the expediency of abolishing the distinction between felony and misdemeanour in criminal law. The distinction is a qualitative one which bears no relation to the specific offence. It is archaic, arbitrary, unscientific, useless and absurd. Its abolition would put an end to several interesting and harmless survivals, and it would do more: it would virtually put an end to the ornamental and wasteful public extravagance of the trial of a peer before the House of Lords, which is only done, as ever, in cases of treason and felony. Is it a debatable point, in twentieth century democratic England, that this survival of ancient law should be retained? The Peers have themselves voted for its abolition.

The abolition of the distinction would complete the work of the Forfeiture Act, 1870, by removing the last of the irrevocable disqualifications attaching to a conviction for felony. Perhaps only lawyers know that where a boy of seventeen is charged with stealing a shilling and is fined a shilling he may never afterwards be the holder of a justices' licence for the sale of intoxicating liquor—be it a publican's licence, a beer-house licence or an off-licence. And this is a disqualification which no court in the land, from the House of Lords downwards, has the power to remove.

Another effect of abolishing the distinction between felony and misdemeanour would be that it would force a complete overhaul of the law relating to powers of arrest without warrant. If every constable knows exactly what his powers are in this relation, we have reached a state of universal police erudition—the law being what it is—that is positively surprising.

Powers of arrest without warrant by constables are derived from common law and from statute. At common law a constable is justified in arresting a person without warrant upon a reasonable suspicion of a felony having been committed and of the person having been guilty of it; no such power exists at common law in a case of misdemeanour.

The solicitors of England will yield to nobody in their determination to uphold, at all times and in all places, the freedom of the citizen in his personal liberty, yet they can affirm that this branch of law, about which there should be no possibility of error, is uncertain and illogical. It is the aim of every right-thinking man that the criminal shall be brought to trial; a modern law might well consider powers of arrest in the light of the modern problem of the itinerant criminal.

A person suspected of having stolen the least valuable thing may be arrested without warrant, but not a person who has obtained a more valuable thing by false pretences unless he is found committing the offence, in practice a very rare thing. A tramp who enters a restaurant and obtains a meal without having the money to pay for it may not be arrested. He may even ride away on a train without paying his fare and without the intention of paying. If he refuses to give his name and address he may be detained but if he gives a name and address he may not be ejected from the train, and it would be a reckless railway servant who detained him until the correctness of the given name and address was confirmed.

Confusion is added by the recent case of *Ledwith* v. *Roberts* (1936), the effect of which is that where a tramp is found in the daytime loitering, trying doors and windows, looking into motor cars and similar conduct which creates a certainty in the mind of the policeman that he intends to steal, he may not be arrested unless he came within the category of a "suspected person or reputed thief" in that policeman's mind before ever any act of the present suspicious conduct was observed. If this conduct happened in the night-time, the policeman, relying on s. 41 (3) of the Larceny Act, 1916, could arrest him and take him before a justice of the peace to be dealt with according to law. But no law is prescribed according to which he might be dealt; for my part, I could only advise the justice to use his original power of binding the man over to keep the peace and be of good behaviour.

As every lawyer knows, there is power to arrest without warrant a person who commits any one of the hundred or so minor offences mentioned in the omnibus s. 28 of the Town Police Clauses Act, 1847, e.g., who annoys his neighbours by shaking his doormat in the street after 8 a.m. Perhaps it ought to be mentioned that the rarity of the occasions on which powers of arrest are actually exercised in trivial cases is itself a tribute to our tactful police. But is it fair to the police that there should be a law which empowers a course of action and a public opinion which would rise up if that course were pursued?

The powers I have referred to are general in all towns throughout the country. In some towns the anomalies have been removed by special Acts of Parliament. For instance, s. 137 (1) of the Birmingham Corporation (Consolidation) Act, 1883, enacts that: "Any person found committing within the borough any offence punishable either on indictment or on summary conviction may by virtue of this Act be taken into custody without a warrant by any constable of the borough." There might be some measure of agreement that the power in Birmingham is too sweeping. Liverpool, Manchester, and certain other towns have special provisions. This is wrong. Either a power of arrest is good or bad; if it is good, it is good for the whole country; if it is bad, it is bad everywhere.

The most recent Firearms Act (1936, Sched. II), which might be taken as a model, enacts "a constable may require any person (. . . whom he believes to have committed an offence under the Act) to declare to him immediately his name and address . . . and the constable may apprehend without warrant any person who refuses so to declare his name and address or whom he suspects of giving a false name or address or of intending to abscond."

It ought to be possible at the present time for Parliament to pass a short Act applicable throughout the country expressing in general terms exactly what the powers of arrest without warrant shall be. There will be obvious difficulties in drafting such an Act, but they should not be insuperable. The saving of judicial time in the future would adequately compensate for the Parliamentary time spent upon such an Act.

I would like to strike a personal note in review of what has gone before. The paper demonstrates neither deep thinking nor intense legal research. Its purpose is merely to call attention to everyday matters studied from a purely practical point of view. From beginning to end it is a piece of destructive criticism, but it is presented as such with the aim of focussing attention upon some of many defects and of leaving to others the task of repairing them.

The first speaker, Mr. J. A. HOWARD-WATSON (Liverpool), said that in Liverpool there was a local Act which made it possible for the justices to deal with cases of insulting words or behaviour likely to lead to a breach of the peace. This local resolution was much used in Liverpool, but as it only applied to the city, the anomaly arose that there was no similar law for the neighbouring town of Bootle. He thought that the custom of allowing motorists to decide their cases by letter was sloppy and quite against the rules of evidence. They might find out that it was much cheaper for them not

to appear in certain cases and he deplored this cheapening of the law. He regarded the distinction between misdemeanour and felony as most archaic and unnecessary. It gave many openings to ingenious members of the Bar and was not for the benefit of justice in general. He pleaded for a great extension of stipendiary magistrates. This would make for continuity of procedure and standardisation of sentences. The expense would be justified by the end attained. He had no doubt that very good justice was attained at present, but that was largely owing to the excellence of the magistrates' clerk. Real judgment was given by the clerk and not by the magistrates, and this was undesirable on the principle that justice should not only be done, but should also appear to be done.

Mr. C. L. NORDON (London) acknowledged the great importance of the paper and wished that the Council would take a greater part in the activities suggested by Mr. Whiteside. He thought it would be very injudicious to alter the present sensible rule that a promise given without consideration was not enforceable. A man who gave a promise in a half-hearted casual manner should not be held amenable to the processes of the courts. He hoped that the appropriate committee would give that matter very careful consideration. Some really serious effort ought to be made to remove the stupid anomaly of the defence of common employment. He had come across many hard cases resulting from this doctrine. A workman who was knocked down by a lorry driven by an employer might get as much as £6,000 in compensation, whereas if the driver of the lorry were a common employee he could not get more than 30s. a week. Parliament had made attempts to alter this, but had not been supported by the Council of the Society and the efforts had fallen flat. The situation was simply due to judicial stupidity. It implied that a workman, when he took on a job, should covenant to absolve the employer from the consequences of injuries by another employee; of course, such an idea never entered a workman's head.

Sir DENNIS HERBERT (London) hoped that this paper would bring about definite results. Most solicitors recognised that the criminal law was deserving of all the epithets Mr. Whiteside had thought it would be improper to apply to it in public. The task of revising the law was an immense one, but people were inclined to think that Parliament would have no time and that the task was, therefore, hopeless. He wished to point out one grain of hope. Parliament had many faults and it did not like lawyers, but in some big things it did recognise their value.

In his opinion, if only the Government could be persuaded to appoint a suitable and strong committee to inquire into the matter, the desired result might be achieved even though the committee took as long over deliberations as the committee on Income Tax had. He instanced a vast change in the law of recent times; that revolution in the property law commonly known as the Birkenhead Act. The preparation of that Bill had taken many hours of involved, immense and devoted labour by great lawyers. When it had come before Parliament many people had expected the committee stage to last for weeks, but the House of Commons had in fact taken the sensible view that this was a matter for lawyers and had left it to them so that, in fact, the committee stage had lasted two days. Something of the same kind might happen if revision of the criminal law were attempted.

Mr. S. C. T. LITTLEWOOD (London) said that the paper and the criticisms it contained had the complete sympathy of all present, even though many of them were not in the ordinary way in touch with criminal law. As a clerk to magistrates he agreed with every word of it. Something ought to be done. He wondered whether it would be possible to send a copy of the paper to the Home Office stating that it had the enthusiastic support of the conference.

Mr. E. MELLIAR SMITH (London) thought the suggestion made by Mr. Littlewood was admirable.

The PRESIDENT agreed with the principle but doubted if the proposed measure was the best step to take. He suggested that it might be left to the Council to consider.

Mr. W. E. MORTIMER (London) suggested that the proposed committee of inquiry ought not to consist solely of lawyers as the public interest was largely involved.

Sir DENNIS HERBERT said that he had never meant to suggest a committee composed entirely of lawyers.

(To be continued.)

A memorial service for the late Master Sir Dunbar Plunket Barton will be held in Gray's Inn Chapel, at 4.30 p.m. on Wednesday, the 13th of October.

The Banquet.

Mr. H. W. MICHELMORE, President of the Devon and Exeter Incorporated Law Society, took the chair at the Banquet, which was held at the Rougemont Hotel on Tuesday evening.

Sir REGINALD POOLE, proposing the health of the Bench and the Bar, said that he had been in some doubt on the exact relative position of bishops and judges. His friend on his left, the Dean of Exeter, had told him that the present Bishop of Exeter had not yet taken his seat in the House of Lords and so was not a Peer of Parliament. Mr. Justice Hawke, whom he had consulted by proxy, had said that judges were only lords when they were on assize. The matter was very difficult. One distinction was, however, sound: a judge could say to a man, "You be hanged," and a bishop could say to him, "You be damned"; but if the judge said so, then that man certainly was hanged. Sir Dennis Herbert, in proposing the same toast last year, had pointed out that neither the Bench nor the Bar ever proposed the health of the solicitors. Sir Reginald proposed to go farther than that: he proposed to ask where the Bench and the Bar would be without the solicitors. His branch of the profession brought them up from the cradle to the grave; it supplied their nourishment, and without it they would be nothing. Solicitors were a sort of Glaxo which built bonny barristers, and, since barristers became judges, bonny judges as well. He doubted whether barristers sufficiently appreciated what solicitors did for them. He did not believe any barrister, surrounded by his wife and little ones at home, ever thought of saying "God bless the solicitors!"

Mr. JUSTICE HAWKE, in reply for the Bench, suggested that the company might not be entirely surprised to hear him confess that he did not exactly know where he was, or whether he was a damner or a hanger. He protested that the Dean of Exeter should have been sitting near him to prompt him, instead of near Sir Reginald Poole, who already had all the advantages of life. He had spent the last two weeks in the kingdom of Scotland, and last Friday had seen a signboard saying "Land's End, 791 miles." He had promptly asked himself how far that made Exeter, and had calculated that it must be about 670 miles. In that kingdom, beautiful as it was, he could not find the works of Francis Bacon or any other works of reference dealing with the Bench. Moreover, the first proof of the toast-list sent him by the secretary had described him as the Recorder of Exeter. He had felt sure that Sir Reginald, himself a student of Bacon, would say everything there was to say about the Bench in his own speech. Sir Reginald had stated—when duly prompted from the right quarter—that he, who spoke, was a Cornishman. So he was, and no one was going to hear him say anything to show that he was not proud of that fact. Nevertheless, Devon had taken him to its bosom as a stranger; the important part of his professional life had been spent in Devon, and if anything had ever been done to train him for the position that he occupied and was proud to occupy, the county of Devon had done that thing. The evening had been a perfect delight to him, and he would leave Exeter with great regret. He only wished he could stay and hear Mr. C. L. Nordon address The Law Society day after day, and play golf with its members. If he were to do so, that would certainly be one up to the Society.

BURDENS OF THE BAR.

Mr. G. D. ROBERTS, K.C., Recorder of Exeter, who replied for the Bar, said that he and the Chief Constable agreed that the city was likely to have a very busy sessions next Tuesday owing to the presence in it of so many doubtful characters. The Bar deemed themselves a much-maligned body of men. They worked disgracefully long hours; had no trade union to protect them ("Oh, Oh!"); received exceedingly inadequate remuneration; spent their lives in an exceedingly noxious atmosphere; and, although they took one ridiculously long holiday, were quite unable to enjoy it owing to financial considerations. How different did they see the lot of the solicitor! Barristers had no managing clerks. Not for them were the delights of Ascot, Henley and Lords, and of returning to the office at a reasonably late hour on the following morning and finding that the money had been rolling in just the same, and that the business had been carried on just as well, or perhaps, if a plebiscite of the clerks' room were taken, much better, without the presence of the partner. Solicitors had that wonderful protection against the wrath of a client, that they could always blame counsel; barristers had no such protection. He had asked a friend to name the attributes which made for success at the Bar, and had been much depressed at his answer. First, his friend had replied, a barrister must have a profound knowledge of the laws of his country. Mr. Roberts admitted,

although he knew his statement might be used in evidence against him, an abysmal ignorance of those laws. Secondly, said his friend, a barrister must possess a high degree of self-confidence; Mr. Roberts had suffered all his professional life from the agonies of the modest man. Thirdly, success at the Bar demanded a legal appearance, but Mr. Roberts had been frequently told that he looked more like a prize-fighter. Be that as it might, the Bar and the solicitors' branch possessed in common a spirit of comradeship and generosity which cemented that great enduring principle which every member in his insignificant way endeavoured to maintain: the continuity of the administration of British justice.

His Honour Judge E. H. C. WETHERED, with the help of two members, entertained the company with some highly skilful and effective magic.

THE SOCIETY'S HEALTH.

THE CHAIRMAN then proposed the health of The Law Society. He observed that those who had attended the discussion on the Council's work that morning would agree that the little Greek artist who had promulgated the slogan "Great is Diana of the Ephesians!" was an outstanding example for solicitors to imitate. Solicitors, speaking generally, suffered from an inferiority complex. Whether this arose from the presentation of their profession by Charles Dickens he did not know, but a striking example of their modesty had been shown in the remarkable volume lately published by the *Illustrated London News* to commemorate the Coronation. Every person who could claim to be representative of any influential body had had his portrait in that number—royalties, aristocracy, judges, naval and military celebrities, and many more. A reader, however, who had looked for a portrait of the Society's late chief, Sir Hubert Dowson, would not have found it, for Sir Hubert was far too modest and retiring to appear in such a brilliant throng. Mr. Michelmore hoped that as a result of holding the Provincial Meeting in this ancient capital of the south-west, solicitors would realise more vividly than before that their profession was a high vocation in which it was a great privilege to be enrolled and would guide their articled clerks in that conviction. No body had greater opportunities than solicitors of serving God and their fellows in their daily business. Solicitors needed to recover this great truth of vocation. Members of the older generation had looked upon their business as their life. The greater the difficulty, the harder the problem, the keener their joy in solving it. Now, many of the younger men seemed to regard business as a bore rather than a delight, as a mere means of making money which they could spend in accordance with their idiosyncrasies. He excepted those who did Poor Persons' work; they were beyond praise. He was always surprised, he said, whenever a member declined to support the Solicitors' Benevolent Association for the reason that he could not afford it. He could not conceive how any solicitor could make that excuse. "If solicitors," he declared, "would take God into partnership, keep accounts and be careful to see that one-tenth of their net profits was paid out on His account, they would be amazed at the way in which their share of the net profits increased year after year." Owing to the efforts of Mr. George Daw, the Association's director in Exeter, practically every solicitor in the city supported it.

LOYAL DEVON.

Mr. F. E. J. SMITH, responding, confessed that he was the last person in the world who should be president of The Law Society. He was a dreamer of dreams, an idealist, ever haunted by the felt difference between what was and what ought to be. He had dreamt the other night that, as Hadrian had built a wall across Northumberland to exclude the wild Picts and Scots—with little success, as those solicitors knew who came up against the "Scotsman on the make"—so that Emperor had built another wall from Exmouth to the Bristol Channel to include all these beautiful gardens, all these lanes, all that rich Devon soil and that rugged bastion of Cornwall. He had also dreamt that the successors of Hadrian had so accurately forecast the wishes of all people to penetrate the beauties of Devon, and the horrors of the internal-combustion engine, that they had arranged a system of entrance fees, and that there were no rates and taxes on the other side of that wall. Still dreaming, he had felt the Mayor, or the Sheriff, tap him on the shoulder and heard him say, "What you dream is all nonsense; you suppose that the punctuality with which the cheques pour in on the 1st January for the Schedule A and B income tax are the result of some machination. They are nothing of the kind; they are the result of the great loyalty that every Devonian feels to all the institutions of his country, even though they be only represented by the tax inspector."

Sir DENNIS HERBERT, M.P., proposing "The City and County of the City of Exeter," suggested that he hardly dare add, "Hereinafter called the said city." He assumed that the object of the toast was to allow the company to hear something more than they already knew of the virtues and greatness of Exeter from His Worship the Mayor. Those who visited it for the first time could know but little about it, and those who, like Sir Dennis, had visited it many times, and probably come to the conclusion that the more they knew about it the more they had yet to learn. It would well repay many visitors who had the time and the opportunity, to study the history of Exeter more carefully. It had peculiarities the origin of which were worth investigating. For instance, when Mr. Justice Hawke came to Exeter for assizes, he had to preside in one court for one class of cases, and be very careful that he only took those cases there; then, for others he had to go into another building and hold another court. With all her loyalty, Exeter must have possessed a certain business capacity to manage, through Stuart times, to preserve all the pre-Stuart silver which it owned. It had yet one more glory to obtain: to establish its reputation of being the great university city of the West. Though he could lay no real claim to being a Devon man, yet his great great-grandfather was buried in the cathedral and his memorial bore an inscription in Greek. This showed the learning of the City of Exeter some 200 years ago! Even in these modern times Sir Dennis believed that more than one citizen of Exeter could not only read that inscription but could even translate it into English. Those who knew anything of Exeter could not help wishing to know more.

EXETER TRADITIONS.

Major A. ANSTEY, Mayor of Exeter, in reply, said that Sir Dennis Herbert had suggested that he should say something of the history of Exeter, but, as the hour was late and a book of considerable size had been written on the Guildhall alone, he thought it advisable to say only a very few words. He could not say how many times during the last few months he had had the honour of replying to that toast of "The City of Exeter," but never had he heard it proposed in a more delightful manner. He would have to speak of Exeter's history from the legal angle. Devon had not produced many lawyers since the time of Mr. Justice Kekewich, because the Court of Appeal had then entered a protest against working overtime. It had, however, produced an eminent lawyer who, it hoped, would rise to even greater heights—their learned Recorder. They had all heard with the greatest pleasure that Mr. Roberts had taken silk. Some people said that they could see no use in lawyers. Some years ago a very old friend of many of those present had been acting professionally for a lady, to whom he had sent what he had considered a very moderate bill. Shortly afterwards there had been a meeting of the local hunt committee, of which he was a very energetic member, and he had taken it upon himself to ask this lady for a subscription. His reception had been rather cool. "I suppose you have come to see me about that iniquitous bill you have just sent me," she said. After listening to her tirade, he replied weakly: "Well, of course, madam, lawyers must live." "I can see no reason whatever," she said. Less than 150 years ago in Exeter there had been only twenty-five solicitors; now there were seventy-two. Twenty-two solicitors had been mayors during the last 100 years, and seventeen had been sheriffs. He would, however, issue a warning. One of those solicitors who had held the office of mayor for three years had committed suicide, and Mr. Anstey suggested that any solicitor who considered taking office for the third year should ponder deeply—unless, of course, he wished to do his city a singular service. Exeter men were very jealous of their traditions, but they had never carried them too far. They were proud of their ancient buildings, of the Guildhall and the Cathedral, and they deplored the decision of their forefathers who had removed the ancient city gates and destroyed most of the city walls, leaving only prints to show what they had been. Their aim and object in Exeter was to preserve and jealously guard their old traditions, having the greatest faith in their security and what they meant not only to the City of Exeter but to the country.

Mr. MAURICE A. MATHEW, proposing the toast of "The Guests," said that he would associate with it the name of The Lord Bishop of Exeter. The Bishop had not been with them long, and it had been suggested that Devon men were slow to take a newcomer into their confidence. That was probably true, but it was also true to say that they had recognised, and recognised at once, that Dr. Curzon was going to take the place and to emulate the example of his famous predecessors. The Dean of Exeter was a welcome visitor at every civic function. It was a very happy coincidence that Dr. Michelmore was the President of the Exeter Division of the British Medical Association at the same time as his father was President of the Devon and Exeter Law Society.

The Mayor of Torquay had often made them welcome in his own town. Sir William Munday was President of the Plymouth Law Society, and Professor Murray was Principal of the University College of the South-west. With the very generous grant that The Law Society gave to law students, there was no doubt that the College was doing an enormous amount in the interests of legal education. Mr. Mathew also welcomed the two Chief Constables of Devon and Cornwall, Major Morris and Mr. Tarry.

THE BISHOP OF EXETER (Dr. Curzon), in reply, said that as a lifelong student of oratory—forensic, ecclesiastical, and in the London streets—he had come to the conclusion that the kind of oratory most acceptable to men, though not perhaps always to women, was that which was called "finished" oratory. It was certainly the most acceptable kind at that late hour of the night. In answering for the guests, he would deliberately exclude the gentleman on his right (Judge Wethered), for it would be most unseemly for a bishop to answer for a man who had such dealings with magical powers. He would, however, gladly answer for all the other guests, for, having received the invitation from The Law Society, who had access to all the documents, he was sure that the other guests were blameless and had otherwise no connection with the law.

A vote of thanks to the President was moved by Mr. D. T. GARRETT, and enthusiastically carried.

Others present at the Banquet included: The Dean of Exeter, Sir Edmund Cook, C.B.E., Sir Hubert Dowson, Sir Charles Morton, Sir William Munday (President of Plymouth Law Society), The Sheriff of Exeter, The Mayor of Torquay, Mr. A. M. Ingledew (Vice-President of The Law Society), The Chief Constable of Devon, The Chief Constable of Exeter, Mr. R. Boase (Vice-President of Devon and Exeter Law Society), Mr. R. F. Holme, Mr. P. J. Kendall, Lt.-Col. S. T. Maynard, T.D., J.P., Dr. R. G. Michelmore, Professor J. Murray, Mr. C. J. Newman, Mr. R. Phillpots and Mr. J. Radcliffe.

Obituary.

MR. A. E. G. CHORLTON.

Mr. Alfred Ethelbert Gospatric Chorlton, solicitor, partner in the firm of Messrs. Chorlton & Gallaway, of Manchester, died at Knowle, Warwickshire, on Saturday, 18th September, in his sixty-eighth year. Mr. Chorlton, who was admitted a solicitor in 1894, was the founder and chairman of the Cotton Trade League. He was also chairman of the Manchester Constitutional Club, honorary secretary of the Conservative Association in Manchester, and chairman of the Moss Side Ward.

MR. M. C. TAIT.

Mr. Mortimer Constantine Tait, retired solicitor, of Hampstead, N.W., died on Friday, 24th September, at the age of eighty-one. Mr. Tait was admitted a solicitor in 1880. He was formerly solicitor to the London and North Western Railway Company.

Books Received.

The Taxation of Profits. By J. W. SCOBELL ARMSTRONG, C.B.E., Barrister-at-Law. 1937. Demy 8vo. pp. xviii and (with Index) 155. London: Virtue & Co., Ltd. 7s. 6d. net.

The New Divorce Act. By JAMES M. SANDERS, Barrister-at-Law. 1937. Crown 8vo. pp. 94. London: George Routledge & Sons, Ltd. 2s. net.

Matrimonial Causes. By LESLIE BROOKS, B.A. (Cantab.), of the Middle Temple and Western Circuit, Barrister-at-Law. 1937. Demy 8vo. pp. xxvii and 134 (Index, 14). London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

Notes on Pollock's "Contracts." By I. G. BRIGGS, Barrister-at-Law. 1937. Demy 8vo. pp. viii and 206. London: Stevens and Sons, Ltd. 5s. net.

Income Tax Law and Practice (and National Defence Contribution). By CECIL A. NEWPORT, F.C.R.A., and RONALD STAPLES. Tenth edition, 1937. Demy 8vo. pp. xxxviii and (with Index) 376. London: Sweet & Maxwell, Ltd.; Taxation Publishing Co., Ltd. 10s. 6d. net.

The National Defence Contribution. Supplement to Spicer and Pegler's "Income Tax." Thirteenth edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A. 1937. Demy 8vo. pp. 35. London: H. F. L. (Publishers), Ltd. Price 1s.

The Matrimonial Causes Act, 1937, and the Summary Procedure (Domestic Proceedings) Act, 1937. By WILLIAM LATEY, M.B.E., Barrister-at-Law, of the Probate and Divorce Court and the Oxford Circuit. 1937. Demy 8vo. pp. viii and (with Index) 92. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 5s. net.

The National Defence Contribution. By LEONARD STEIN, of the Inner Temple, Barrister-at-Law, and HERBERT H. MARKS, Fellow of the Institute of Chartered Accountants. 1937. Demy 8vo. pp. xi and (with Index) 180. London: Sweet & Maxwell, Ltd. 10s. net.

The Practice of the Privy Council in Judicial Matters. By NORMAN BENTWICH, of Lincoln's Inn, Barrister-at-Law. Third Edition, 1937. Demy 8vo. pp. xxiv and (with Index) 353. London: Sweet & Maxwell, Ltd. 35s. net.

A Text-book of the Law of Tort. By P. H. WINFIELD, F.B.A., LL.D. (Cantab.), Hon. LL.D., Harvard, of the Inner Temple, Barrister-at-Law. 1937. Demy 8vo. pp. xl and (with Index) 728. London: Sweet & Maxwell, Ltd. 30s. net.

Chitty's Treatise on the Law of Contracts. Nineteenth Edition, 1937. By Sir CHARLES ODGERS, M.A., B.C.L., W. A. MACFARLANE, B. DE H. PEREIRA, NORMAN BLACK, A. A. MOCATTA, and H. EDMUND DAVIES, LL.D. (Lond.), B.C.L. (Oxon), Barristers-at-Law, and R. W. JONES; General Editor, HAROLD POTTER, Ph.D., LL.B., Solicitor of the Supreme Court. Royal 8vo. pp. ccxvi and (with Index) 1031. London: Sweet & Maxwell, Ltd. £2 10s. net.

Rules and Orders.

THE HOUSING ACT, 1936 (OPERATION OF OVERCROWDING PROVISIONS) ORDER (NO. 3), 1937, DATED SEPTEMBER 20, 1937, MADE BY THE MINISTER OF HEALTH UNDER THE HOUSING ACT, 1936 (26 GEO. 5 & 1 EDW. 8. C. 51).

92791.

The Minister of Health, in exercise of his powers under Section 68 of the Housing Act, 1936 (hereinafter referred to as "the Act"), and of all other powers enabling him in that behalf, hereby makes the following Order:—

1. In relation to the areas which are specified in the Schedule to this Order the appointed day for the purposes of Section 62 of the Act (which provides for entry in rent books or similar documents of a summary in the prescribed form of certain provisions of the Act relating to overcrowding) shall be the first day of October, 1937, and the appointed day for the purposes of Sections 59 and 64 (which contain provisions as to offences in relation to overcrowding) and Section 60 and subsection (2) of Section 6 of the Act shall be the first day of April, 1938.

2. This Order may be cited as the Housing Act, 1936 Operation of Overcrowding Provisions) Order (No. 3), 1937.

SCHEDULE.

AREAS TO WHICH THIS ORDER APPLIES.

COUNTY DISTRICTS.

County of Monmouth.

Urban District of:—Nantyglo and Blaina.

County of Anglesey.

Rural District of:—Aethwy.

Given under the official seal of the Minister of Health this twentieth day of September, nineteen hundred and thirty-seven.

(L.S.)

E. D. Macgregor,
Assistant Secretary,
Ministry of Health.

Legal Notes and News.

Honours and Appointments.

The King has approved the following appointments, to take effect on 1st October :—

Mr. JOHN CHARLES FENTON, K.C., Sheriff of Fife and Kinross, to be Sheriff of Stirling, Dumbarton and Clackmannan, in place of Sir Archibald Campbell Black, K.C., appointed Sheriff of Lanarkshire.

Mr. JOHN RUDOLPH WARDLAW BURNET, K.C., to be Sheriff of Fife and Kinross.

Mr. GERALD DODSON, LL.M., Judge of the Mayor's and City of London Court, has been elected to the office of Recorder of London in succession to Sir Holman Gregory, K.C., who is retiring on the 9th October. Judge Dodson was called to the Bar by the Inner Temple in 1907, and was appointed Judge of the Mayor's and City of London Court in 1934.

Mr. DESMOND VICTOR O'MEARA, solicitor, assistant town clerk of Birmingham, has been appointed Deputy Town Clerk of Croydon. Mr. O'Meara was admitted a solicitor in 1926.

Notes.

The next general Quarter Sessions for the Borough of Stamford will be held on Wednesday, 13th October, at 11.30 a.m.

The autumnal meeting of the Institute of Chartered Accountants will be held this year in Liverpool, on 5th, 6th and 7th October, at the invitation of the Liverpool Society of Chartered Accountants.

The following days and places have been fixed for holding the autumn Assizes on the North Wales and Chester Circuit :—Lawrence, J.—Monday, 1st November, at Caernarvon; Saturday, 6th November, at Ruthin; and Wednesday, 10th November, at Chester.

Mr. John Pearce has retired after being for more than fifty years clerk to the justices of Willesden, thirty-five years clerk at Acton, and until recently clerk at Kensington. At Willesden Police Court last week he was presented with an inlaid cigar cabinet, the gift of members of the Willesden and Acton Benches.

OFFICIAL STATISTICS.

Every year the Stationery Office publishes a large number of volumes containing statistics collected through official channels. The range of the subjects dealt with is so wide, and the degree of detail in which they are examined so varied, that this store of information cannot be utilised to the best advantage without a single systematic index to the contents of all statistical publications of this nature. Such an index has been in existence for a number of years, a new volume, dealing with the statistics published in the preceding year, being issued annually. From this index, the nature of the information available on any subject, and the official publication in which it is contained, can be readily ascertained. The title of this useful handbook is *The Guide to Current Official Statistics*. Volume fifteen, relating to the official statistics published in 1936, contains over 400 pages, and is obtainable from H.M. Stationery Office, or through any bookseller, for one shilling (by post 1s. 6d.).

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 7th October, 1937.

	Div. Months.	Middle Price 29 Sept. 1937.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108¼	3 13 11	3 8 1
Consols 2½%	JAJO	73⅛	3 7 9	—
War Loan 3½% 1952 or after	JD	100⅛	3 9 6	3 8 9
Funding 4% Loan 1960-90	MN	109¾xd	3 12 11	3 7 8
Funding 3% Loan 1959-69	AO	95	3 3 2	3 5 1
Funding 2½% Loan 1952-57	JD	94	2 18 6	3 3 3
Funding 2½% Loan 1956-61	AO	88	2 16 10	3 4 6
Victory 4% Loan Av. life 22 years	MS	108¼	3 13 9	3 8 11
Conversion 5% Loan 1944-64	MN	111⅜xd	4 9 9	2 18 1
Conversion 4½% Loan 1940-44	JJ	106½	4 4 6	2 4 9
Conversion 3½% Loan 1961 or after	AO	99½	3 10 4	—
Conversion 3% Loan 1948-53	MS	98¾	3 0 9	3 2 1
Conversion 2½% Loan 1944-49	AO	95	2 12 8	3 0 10
Local Loans 3% Stock 1912 or after	JAJO	85	3 10 7	—
Bank Stock	AO	334½	3 11 9	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	77	3 11 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	113	3 19 8	3 5 3
India 3½% 1931 or after	JAJO	92	3 16 1	—
India 3% 1948 or after	JAJO	78	3 16 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 2 11
Tanganyika 4% Guaranteed 1951-71	FA	108	3 14 1	3 4 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105	4 5 9	3 3 2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	88	2 16 10	3 8 1
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	104	3 16 11	3 13 10
Australia (Commonw'th) 3% 1955-58	AO	88	3 8 2	3 16 11
Canada 4% 1953-58	MS	107	3 14 9	3 8 6
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50	JJ	98	3 11 5	3 14 0
New Zealand 3% 1945	AO	96	3 2 6	3 12 5
Nigeria 4% 1963	AO	108	3 14 1	3 10 6
Queensland 3½% 1950-70	JJ	96	3 12 11	3 14 4
South Africa 3½% 1953-73	JD	102	3 8 8	3 6 8
Victoria 3½% 1929-49	AO	96	3 12 11	3 18 6
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	87	3 9 0	—
Croydon 3% 1940-60	AO	94	3 3 10	3 7 5
*Essex County 3½% 1952-72	JD	102	3 8 8	3 6 8
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	98	3 11 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83	3 12 3	—
Manchester 3% 1941 or after	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49	MJSD	94½	2 12 11	3 1 0
Metropolitan Water Board 3% "A" 1963–2003	AO	85½	3 10 2	3 11 6
Do. do. 3% "B" 1934-2003	MS	86½	3 9 4	3 10 6
Do. do. 3% "E" 1953-73	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950–70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable	MN	84½	3 11 0	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	105½	3 15 10	—
Gt. Western Rly. 4½% Debenture	JJ	116½	3 17 3	—
Gt. Western Rly. 5% Debenture	JJ	128½	3 17 10	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	124	4 0 8	—
Gt. Western Rly. 5% Preference	MA	116½	4 5 10	—
Southern Rly. 4% Debenture	JJ	104½	3 16 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106¼	3 15 1	3 12 1
Southern Rly. 5% Guaranteed	MA	125	4 0 0	—
Southern Rly. 5% Preference	MA	113½	4 8 1	—

*Not available to Trustees over par.

‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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